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Legislative History – Montana Session Law

Chapter: 485 Session L: 1983

Bill Number: HB 390

Checklist of Bill History

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee: Labor & Employment Relations

Hearing Date(s): 1/28/1983

Committee Report: 1/29/1983

Senate

Committee: Labor & Employment Relations

Hearing Date(s): 3/15/1983

Committee Report: 3/21/1983

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 1/24/2025

Notes: Any committee documents or recordings will be held by the Montana Historical Society

3RD READING: 02/21/83, DO PASS AYES: 87; NAYS: 9

TRANSMITTED TO SENATE: 2/21/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 3/1/83
HEARING: 3/21/83
REPORT: 03/25/83, BE NOT CONCURRED IN, AS AMENDED
BILL KILLED: 03/25/83

HB 387 -- VINCENT, ECK -- LIMITING AN INDIVIDUAL'S CONTRIBUTIONS TO A POLITICAL COMMITTEE; AMENDING SECTION

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/19/83
HEARING: 2/8/83
REPORT: 02/16/83, DO PASS, AS AMENDED
2ND READING: 02/17/83, DO PASS AYES: 63; NAYS: 33
3RD READING: 02/21/83, DO PASS AYES: 70; NAYS: 30

TRANSMITTED TO SENATE: 2/21/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 3/1/83
HEARING: 3/21/83
REPORT: 03/25/83, BE NOT CONCURRED IN, AS AMENDED
BILL KILLED: 03/25/83

HB 388 -- HARRINGTON, PAVLOVICH, MENAHAN, ET AL. -- AUTHORIZING SELF-GOVERNING COUNTIES AND SELF-GOVERNING CITY-COUNTY CONSOLIDATED LOCAL GOVERNMENTS TO REGULATE GAMBLING WITHIN THEIR JURISDICTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR A TAX ON GAMBLING REVENUES, FACILITIES, IMPLEMENTS, AND MACHINES; AMENDING SECTIONS....

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/19/83
HEARING: 2/8/83
REPORT: 02/12/83, DO NOT PASS, AS AMENDED
OBJECTION 2/14/83
2ND READING: 02/16/83, DO NOT PASS AYES: 58; NAYS: 40
BILL KILLED

HB 389 -- MENAHAN, PAVLOVICH, DAILY, ET AL. -- TO PROVIDE FOR MOTOR VEHICLE LIABILITY COVERAGE OF PERSONS WITHOUT REGARD TO THE MOTOR VEHICLES OWNED OR OPERATED BY THE INSURED; AMENDING SECTIONS

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/19/83
HEARING: 2/2/83
DIED IN COMMITTEE

HB 390 -- ADDY, DRISCOLL, WINSLOW -- TO DEFINE UNFAIR LABOR PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS; AMENDING SECTIONS ...; AND REPEALING SECTIONS
BY REQUEST OF: THE PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS: 01/19/83
HEARING: 1/28/83
REPORT: 01/29/83, DO PASS

2ND READING: 02/01/83, DO PASS AYES: 97; NAYS: 0
3RD READING: 02/03/83, DO PASS AYES: 94; NAYS: 1

TRANSMITTED TO SENATE: 2/3/83
REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS: 02/04/83
HEARING: 3/15/83
REPORT: 03/21/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/23/83 AYES: 50; NAYS: 0
3RD READING: 03/25/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 03/25/83
2ND READING: 03/31/83, BE CONCURRED IN AYES: 85; NAYS: 1
3RD READING: 04/01/83, BE CONCURRED IN AYES: 86; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/11/83
SIGNED: 04/14/83, CHAPTER 485

HB 391 -- STOBIE, MANUEL, QUILICI, ET AL. -- TO REQUIRE THAT IF THE BOARD OF LAND COMMISSIONERS ADOPTS RULES TO ESTABLISH THE MARKET VALUE OF SURFACE LICENSES AND LEASES, IT ADOPT A METHOD OF VALUATION OF CURRENT LICENSES AND LEASES BASED UPON AN APPRAISED LICENSE OR LEASE VALUE AND A METHOD OF VALUATION OF INITIAL LICENSES OR LEASES BASED UPON A SYSTEM OF COMPETITIVE BIDDING; AND PROVIDING FOR THE VALUATION, DISPOSAL, OR PURCHASE OF FIXTURES AND IMPROVEMENTS.

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 01/19/83
HEARING: 2/2/83
REPORT: 02/10/83, DO PASS, AS AMENDED
2ND READING: 02/12/83, DO PASS AYES: 89; NAYS: 1
3RD READING: 02/15/83, DO PASS AYES: 97; NAYS: 2

TRANSMITTED TO SENATE: 2/15/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/16/83
HEARING: 3/2/83
REPORT: 3/8/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/10/83 AYES: 49; NAYS: 0
3RD READING: 03/12/83 AYES: 47; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/12/83
2ND READING: 03/31/83, BE CONCURRED IN AYES: 86; NAYS: 0
3RD READING: 04/01/83, BE CONCURRED IN AYES: 85; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/08/83
SIGNED: 4/12/83, CHAPTER 459

HB 392 -- D. BROWN, NORDTVEDT, LORY, ET AL. -- ALLOCATING INDIRECT COST REIMBURSEMENTS OF RESEARCH GRANTS RECEIVED BY THE UNIVERSITY SYSTEM; AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 01/19/83
HEARING: 3/24/83
REPORT: 03/28/83, DO NOT PASS
BILL KILLED: 03/29/83

HB 393 -- J. JENSEN, TOWE, DRISCOLL, ET AL. -- PROVIDING FOR PREPUBLICATION NOTICE TO A CANDIDATE WHOSE VOTING RECORD OR PERSONAL HISTORY IS MENTIONED IN A CAMPAIGN

HOUSE BILL NO. 390

INTRODUCED BY ADDY, DRISCOLL, WINSLOW

BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS
STUDY COMMISSION

IN THE HOUSE

January 19, 1983	Introduced and referred to Committee on Labor and Employment Relations.
January 29, 1983	Committee recommend bill do pass. Report adopted.
January 31, 1983	Bill printed and placed on members' desks.
February 1, 1983	Second reading, do pass.
February 2, 1983	Considered correctly engrossed.
February 3, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 4, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 21, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 25, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 390
 2 INTRODUCED BY Ally Drenth
 3 BY REQUEST OF THE PERSONNEL AND
 4 LABOR RELATIONS STUDY COMMISSION
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE UNFAIR LABOR
 7 PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS
 8 REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR
 9 ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE
 10 APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT
 11 WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS;
 12 AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109,
 13 MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND
 14 39-32-111, MCA."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 39-32-102, MCA, is amended to read:

18 "39-32-102. Definitions. As used in this chapter,
 19 unless the context clearly requires otherwise, the following
 20 definitions apply:

21 (1) "Appropriate unit" means a homogenous group of
 22 employees (as herein defined) of a health care facility
 23 having similar duties and qualifications determined pursuant
 24 to 39-32-106.

25 (2) "Board" means the board of personnel appeals

1 provided for in 2-15-1705.

2 ~~(2)(3)~~ "Employee" means a registered professional or
 3 licensed practical nurse performing services for
 4 compensation for a health care facility but does not include
 5 a member of a religious order assigned to a health care
 6 facility by the order as a part of her obligation to the
 7 order.

8 ~~(3)(4)~~ "Health care facility" means a hospital or
 9 nursing home or other agency or establishment employing
 10 employees as defined in this chapter, whether operated
 11 publicly or privately, having as one of its principal
 12 purposes the preservation of health or the care of sick or
 13 infirm individuals or both.

14 ~~(4)(5)~~ "Strike" shall mean any work stoppage caused by
 15 the employees of a health care facility, as defined in
 16 subsection ~~(3)~~ ~~(4)~~ of this section, that interferes with the
 17 operation of the health care facility or affects the care of
 18 patients in the health care facility."

19 Section 2. Section 39-32-103, MCA, is amended to read:

20 "39-32-103. Rules. The ~~department of labor and~~
 21 ~~industry may board shall~~ adopt and promulgate rules as to
 22 ~~times and places for hearing and notice thereof so as to~~
 23 ~~provide adequate notice and opportunity to be heard to all~~
 24 ~~interested parties as to elections, and so as to carry into~~
 25 effect the provisions of this chapter."

Section 3. Section 39-32-104, MCA, is amended to read:

"39-32-104. Hearings for determination of appropriate unit. The ~~department of labor and industry board~~ may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2) ~~or 39-32-100(1)~~."

Section 4. Section 39-32-105, MCA, is amended to read:

"39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The ~~department of labor and industry board~~ may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the ~~department board~~ may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition."

Section 5. Section 39-32-106, MCA, is amended to read:

"39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the ~~department of labor and industry board~~ and said ~~department board~~, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit."

Section 6. Section 39-32-109, MCA, is amended to read:

"39-32-109. ~~improper employment practices~~ Unfair labor practices of health care facility. It is an ~~improper employment unfair labor~~ practice for a health care facility to do one or more of the following:

(1) interfere with or restrain or coerce employees in

1 any manner in the exercise of their right of
2 self-organization;

3 (2) initiate, create, dominate, contribute to, or
4 interfere with the formation or administration of any
5 employee organization that has collective bargaining as one
6 of its principal functions;

7 (3) discriminate in regard to hire terms or conditions
8 of employment when a purpose of such is to discourage
9 membership in an employee organization that has collective
10 bargaining as one of its principal functions;

11 (4) refuse to meet and bargain in good faith with the
12 duly designated representatives of an appropriate bargaining
13 unit of its employees. For the purpose of this subsection,
14 it is a requirement of bargaining in good faith that the
15 parties be willing to reduce in writing and have their
16 representative sign any agreement arrived at through
17 negotiations and discussion.

18 (5) unilaterally exclude from work or prevent from
19 working or discharge any one or more employees when the
20 purpose of such action is in whole or in part to interfere
21 with or coerce or intimidate an employee in the exercise of
22 rights assured in this law."

23 NEW SECTION. Section 7. Unfair labor practices of
24 labor organization. It is an unfair labor practice for a
25 labor organization or its agents to:

1 (1) restrain or coerce employees in the exercise of
2 the right to:

3 (a) form, join, or assist any labor organization;

4 (b) bargain collectively through representatives of
5 their own choosing; or

6 (c) engage in other concerted activities for the
7 purpose of collective bargaining or other mutual aid or
8 protection;

9 (2) restrain or coerce an employer in the selection of
10 his representative for the purpose of collective bargaining
11 or the adjustment of grievances;

12 (3) refuse to bargain collectively in good faith with
13 an employer if it has been designated as the exclusive
14 representative of employees;

15 (4) use agency shop fees for contributions to
16 political candidates or parties at state or local levels.

17 NEW SECTION. Section 8. Adjudication of unfair labor
18 practices complaints. Violations of 39-32-109 or [section 7]
19 are remediable by the board, and board orders are
20 enforceable and reviewable by the court in the same manner
21 as provided for in Title 39, chapter 31, part 4.

22 NEW SECTION. Section 9. Representation questions
23 decided by the board. Representation questions shall be
24 decided by the board in the same manner as provided for in
25 39-31-207 through 39-31-210.

1 NEW SECTION. Section 10. Subpoena power. The board
2 has the same power to subpoena witnesses and administer
3 oaths and affirmations under this chapter as it does under
4 Title 39, chapter 31, and the provisions of 39-31-106 and
5 39-31-107 are incorporated by reference into this chapter.

6 NEW SECTION. Section 11. Codification instruction.
7 Sections 7 through 10 are intended to be codified as an
8 integral part of Title 39, chapter 32, and the provisions of
9 Title 39, chapter 32, apply to sections 7 through 10.

10 NEW SECTION. Section 12. Repealer. Sections
11 39-32-107, 39-32-108, and 39-32-111, MCA, are repealed.

-End-

Approved by Committee
on Labor & Employment
Relations

1 House BILL NO. 390
2 INTRODUCED BY Ally Drenth
3 BY REQUEST OF THE PERSONNEL AND
4 LABOR RELATIONS STUDY COMMISSION
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE UNFAIR LABOR
7 PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS
8 REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR
9 ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE
10 APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT
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12 AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109,
13 MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND
14 39-32-111, MCA."
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20 definitions apply:

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22 employees (as herein defined) of a health care facility
23 having similar duties and qualifications determined pursuant
24 to 39-32-106.

25 (2) "Board" means the board of personnel appeals

1 ~~provided for in 2-15-1705.~~

2 (2)(3) "Employee" means a registered professional or
3 licensed practical nurse performing services for
4 compensation for a health care facility but does not include
5 a member of a religious order assigned to a health care
6 facility by the order as a part of her obligation to the
7 order.

8 (3)(4) "Health care facility" means a hospital or
9 nursing home or other agency or establishment employing
10 employees as defined in this chapter, whether operated
11 publicly or privately, having as one of its principal
12 purposes the preservation of health or the care of sick or
13 infirm individuals or both.

14 (4)(5) "Strike" shall mean any work stoppage caused by
15 the employees of a health care facility, as defined in
16 subsection (3) (4) of this section, that interferes with the
17 operation of the health care facility or affects the care of
18 patients in the health care facility."

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20 "39-32-103. Rules. The department--of--labor--and
21 industry--may--board--shall adopt and promulgate rules as--to
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23 provide--adequate--notice--and--opportunity--to--be--heard--to--all
24 interested--parties--as--to--elections--and--so--as to carry into
25 effect the provisions of this chapter."

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-End-

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 3 BY REQUEST OF THE PERSONNEL AND
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(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit."

Section 6. Section 39-32-109, MCA, is amended to read:

"39-32-109. ~~Improper employment practices~~ Unfair labor practices of health care facility. It is an ~~improper employment~~ unfair labor practice for a health care facility to do one or more of the followings:

(1) interfere with or restrain or coerce employees in

1 any manner in the exercise of their right of
2 self-organization;

3 (2) initiate, create, dominate, contribute to, or
4 interfere with the formation or administration of any
5 employee organization that has collective bargaining as one
6 of its principal functions;

7 (3) discriminate in regard to hire terms or conditions
8 of employment when a purpose of such is to discourage
9 membership in an employee organization that has collective
10 bargaining as one of its principal functions;

11 (4) refuse to meet and bargain in good faith with the
12 duly designated representatives of an appropriate bargaining
13 unit of its employees. For the purpose of this subsection,
14 it is a requirement of bargaining in good faith that the
15 parties be willing to reduce in writing and have their
16 representative sign any agreement arrived at through
17 negotiations and discussion.

18 (5) unilaterally exclude from work or prevent from
19 working or discharge any one or more employees when the
20 purpose of such action is in whole or in part to interfere
21 with or coerce or intimidate an employee in the exercise of
22 rights assured in this law."

23 NEW SECTION. Section 7. Unfair labor practices of
24 labor organization. It is an unfair labor practice for a
25 labor organization or its agents to:

1 (1) restrain or coerce employees in the exercise of
2 the right to:

3 (a) form, join, or assist any labor organization;

4 (b) bargain collectively through representatives of
5 their own choosing; or

6 (c) engage in other concerted activities for the
7 purpose of collective bargaining or other mutual aid or
8 protection;

9 (2) restrain or coerce an employer in the selection of
10 his representative for the purpose of collective bargaining
11 or the adjustment of grievances;

12 (3) refuse to bargain collectively in good faith with
13 an employer if it has been designated as the exclusive
14 representative of employees;

15 (4) use agency shop fees for contributions to
16 political candidates or parties at state or local levels.

17 NEW SECTION. Section 8. Adjudication of unfair labor
18 practices complaints. Violations of 39-32-109 or [section 7]
19 are remediable by the board, and board orders are
20 enforceable and reviewable by the court in the same manner
21 as provided for in Title 39, chapter 31, part 4.

22 NEW SECTION. Section 9. Representation questions
23 decided by the board. Representation questions shall be
24 decided by the board in the same manner as provided for in
25 39-31-207 through 39-31-210.

1 NEW SECTION. Section 10. Subpoena power. The board
2 has the same power to subpoena witnesses and administer
3 oaths and affirmations under this chapter as it does under
4 Title 39, chapter 31, and the provisions of 39-31-106 and
5 39-31-107 are incorporated by reference into this chapter.

6 NEW SECTION. Section 11. Codification instruction.
7 Sections 7 through 10 are intended to be codified as an
8 integral part of Title 39, chapter 32, and the provisions of
9 Title 39, chapter 32, apply to sections 7 through 10.

10 NEW SECTION. Section 12. Repealer. Sections
11 39-32-107, 39-32-108, and 39-32-111, MCA, are repealed.

-End-

March 21, 1983

SENATE STANDING COMMITTEE REPORT
(Labor & Employment Relations)

That House Bill No. 390 be amended as follows:

1. Page 6, line 16.

Following: "parties"

Strike: "at state or local levels"

HOUSE BILL NO. 390

INTRODUCED BY ADDY, DRISCOLL, WINSLOW

BY REQUEST OF THE PERSONNEL AND

LABOR RELATIONS STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE UNFAIR LABOR PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS; AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109, MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND 39-32-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-32-102, MCA, is amended to read:

"39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals

~~provided for in 2-15-1705.~~

(2)(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3)(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4)(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (3) (4) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility."

Section 2. Section 39-32-103, MCA, is amended to read:

"39-32-103. Rules. The department--of--labor--and industry--may board shall adopt and promulgate rules as--to times--and--places--for--hearing--and--notice--thereof--so--as--to provide--adequate--notice--and--opportunity--to--be--heard--to--all interested--parties--as--to--elections--and--so--as to carry into effect the provisions of this chapter."

Section 3. Section 39-32-104, MCA, is amended to read:

"39-32-104. Hearings for determination of appropriate unit. The ~~department-of-labor-and-industry board~~ may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2) ~~or 39-32-106(1)~~."

Section 4. Section 39-32-105, MCA, is amended to read:

"39-32-105. General classifications for health care facilities and appropriate units -- petition for removal from general classification. (1) The ~~department-of-labor-and-industry board~~ may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the ~~department board~~ may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition."

Section 5. Section 39-32-106, MCA, is amended to read:

"39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the ~~department-of-labor-and-industry board~~ and said ~~department board~~, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit."

Section 6. Section 39-32-109, MCA, is amended to read:

"39-32-109. ~~Improper employment practices~~ Unfair labor practices of health care facility. It is an ~~improper employment~~ unfair labor practice for a health care facility to do one or more of the following:

(1) interfere with or restrain or coerce employees in

1 any manner in the exercise of their right of
2 self-organization;

3 (2) initiate, create, dominate, contribute to, or
4 interfere with the formation or administration of any
5 employee organization that has collective bargaining as one
6 of its principal functions;

7 (3) discriminate in regard to hire terms or conditions
8 of employment when a purpose of such is to discourage
9 membership in an employee organization that has collective
10 bargaining as one of its principal functions;

11 (4) refuse to meet and bargain in good faith with the
12 duly designated representatives of an appropriate bargaining
13 unit of its employees. For the purpose of this subsection,
14 it is a requirement of bargaining in good faith that the
15 parties be willing to reduce in writing and have their
16 representative sign any agreement arrived at through
17 negotiations and discussion.

18 (5) unilaterally exclude from work or prevent from
19 working or discharge any one or more employees when the
20 purpose of such action is in whole or in part to interfere
21 with or coerce or intimidate an employee in the exercise of
22 rights assured in this law."

23 **NEW SECTION.** Section 7. Unfair labor practices of
24 labor organization. It is an unfair labor practice for a
25 labor organization or its agents to:

1 (1) restrain or coerce employees in the exercise of
2 the right to:

3 (a) form, join, or assist any labor organization;

4 (b) bargain collectively through representatives of
5 their own choosing; or

6 (c) engage in other concerted activities for the
7 purpose of collective bargaining or other mutual aid or
8 protection;

9 (2) restrain or coerce an employer in the selection of
10 his representative for the purpose of collective bargaining
11 or the adjustment of grievances;

12 (3) refuse to bargain collectively in good faith with
13 an employer if it has been designated as the exclusive
14 representative of employees;

15 (4) use agency shop fees for contributions to
16 political candidates or parties ~~at state or local levels.~~

17 **NEW SECTION.** Section 8. Adjudication of unfair labor
18 practices complaints. Violations of 39-32-109 or [section 7]
19 are remediable by the board, and board orders are
20 enforceable and reviewable by the court in the same manner
21 as provided for in Title 39, chapter 31, part 4.

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23 decided by the board. Representation questions shall be
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8 integral part of Title 39, chapter 32, and the provisions of
9 Title 39, chapter 32, apply to sections 7 through 10.

10 NEW SECTION. Section 12. Repealer. Sections
11 39-32-107, 39-32-108, and 39-32-111, MCA, are repealed.

-End-

MINUTES OF THE MEETING OF THE LABOR AND EMPLOYMENT RELATIONS
COMMITTEE
January 28, 1983

The meeting was called to order at 7:00 p.m. by Chairman Williams. Roll call was taken and all members were present except Representatives Pavlovich, Smith and Thoft, who were excused.

Testimony was heard on HB 378, HB 384, and HB 390 during this meeting. Executive action was taken on HB 390.

HOUSE BILL 378

REPRESENTATIVE JOE BRAND, District 28, chief sponsor of HB 378, said HB 378 is an act to extend the veterans' appointment and employment preference to reappointment and continued employment. Representative Brand said the Montana State Legislature created veterans' preference for public employment in the year 1921. This act accomplished the legislative purpose of honoring veterans by giving them, their spouses and surviving spouses, and the other dependents of disabled veterans a slight advantage to compete for jobs in public employment. The law was further amended in 1955 to include disabled civilians, their spouses and dependents with the same preference.

The Federal Veterans' Preference Act of 1944 was passed by the 78th Congress. This law granted veterans certain job retention rights over nonveterans with similar status and performance records in the event of a reduction-in-force. House Bill 378 is being introduced for that purpose.

It might appear that the Civil Rights Act of 1964 would provide an effective vehicle for establishing a prima facie case of discrimination against women through the use of statistics. This would shift the burden to the defendant (government) to justify its practice of extending preference to veterans. However, in enacting Section 712 of the Civil Rights Act of 1964, Congress specifically exempted veterans' preference from attack under the act: "Nothing contained in this subchapter shall be construed to repeal or modify any federal, state, territorial, or local law creating special rights or preference for veterans." As a result, the Civil Rights Act has generally not been an avenue of approach for those who would challenge veterans' preference.

REPRESENTATIVE BRAND said there is no sex discrimination in the veterans' law act.

Proponents

NADIEAN JENSEN, Executive Director of the American Federation of State, County and Municipal Employees, AFL-CIO, testified in support of veterans' preference. She asked that HB 378 be amended to provide for equal treatment of veterans, minorities, and the handicapped. House Bill 378 should also be amended to provide that its provisions would not impair or abridge the obligations of employment relations contained in collective bargaining contracts.

MS. JENSEN read a prepared statement to the committee. (See EXHIBIT 1.)

BOB DURKEE, representing Veterans of Foreign Wars, testified in favor of HB 378. He said there had been a former state attorney general who said the retention part of veterans' preference is alluded to in the law. He urged the committee to adopt HB 378 as written.

TONY CUMMING, State Adjutant of the American Legion, said the group he represents supports HB 378.

DAN ANTONIETTE, State Director of the USDL-VES, said he supports the bill as proposed because the bill is compatible with the federal Veterans' Employment Act which was passed in 1942. He said Congress enacted a disabled veterans' outreach program. The job service people must hire for positions according to state guidelines but must also follow federal guidelines which apply to disabled veterans.

ROBERT BOTTERBUSCH said he is a veteran and a state employee. Mr. Botterbusch said the Montana Codes specifically say veterans' preference applies to qualified veterans. It is only logical to apply veterans' preference to the retentions, layoffs, and reductions in force.

DON GIES, a veteran of the Korean and Viet Nam Wars, asked the committee to remember that veterans are not looking to receive jobs simply because they are veterans.

ROBERT MILLER, a veteran of the Korean War, said he supports HB 378.

Opponents

DENNIS TAYLOR, Administrator of the Personnel Division, Department of Administration, testified in opposition to HB 378 as it currently reads. He said the state has been administering the Veterans' Preference Act as a tie-breaker between substantially

equal applicants, but many public agencies do not apply the act either because they are unaware of it or because the act is too vague and difficult to interpret.

The act was passed in 1921 and amended to include handicapped civilians in 1927. Because of the vagueness and lack of definition, veterans and disabled people have (at least in recent years) seldom received preference. The law talks about "preference" but does not say what it is or how it will be provided. It provides no procedure for applying preference. It includes no definitions of the terms used in the act.

Last summer, the state worked with veterans' organizations, handicapped advisory organizations, and other public employers to determine what needed to be done with the act to make it workable. The following areas were identified:

1. The nature of the preference needed to be clarified as a tie-breaker rather than an absolute preference or entitlement.
2. The procedures for applying the preference needed to be clarified.
3. Rulemaking authority was needed to effectively administer the preference.
4. Terms needed to be clearly defined.

MR. TAYLOR talked about SB 197 which would provide a law which could be affirmatively, fairly and consistently administered by public employees. He urged the committee to table HB 378 and to defer to the Senate until that body has a chance to fully consider SB 197. If the committee feels a need to act on HB 378, Mr. Taylor asked them to consider some amendments to the bill. (Those amendments are included in EXHIBIT 2.)

MR. TAYLOR also submitted copies of drafted bills dealing with clarification of the Veterans' Preference Act. He asked that those copies be included in the minutes of this meeting. (See EXHIBIT 3.)

GENE FENDERSON, business manager of Laborers Local 254, AFL-CIO, testified in opposition to HB 378. He told the committee he was not speaking against veterans' preference itself, but said there are some distinctions which must be made when addressing this issue. The concept of veterans' preference arose from a praiseworthy effort to compensate in some way the time veterans had lost from the job market because of their service during a war

or armed conflict. Giving those veterans preference has helped make up for their loss of employment opportunity while they defended their country. That concept is recognized in a resolution adopted by the Montana State AFL-CIO convention in 1982. Mr. Fenderson said HB 378 expands employment opportunities for veterans, which is not mentioned in the resolution adopted by the AFL-CIO, and the resolution specifically mentions veterans who served their country in "time of war". Veterans' preference is supposed to equalize employment opportunities for veterans, not to give them an added advantage at the expense of other groups, such as women, minorities and the handicapped.

MR. FENDERSON said many veterans who enjoy veterans' preference did not serve in time of war. They chose to serve in the armed forces to learn a specific skill or to receive certain veterans' benefits, such as the G.I. bill to further their education. Others chose the service as a full time career. These individuals were not deprived of any opportunity to gain employment. He asked the committee to vote against HB 378 which expands veterans' preference at the expense of other groups which have traditionally been denied equal employment opportunities. (See EXHIBIT 4.)

JAN GILMAN, representing the Interdepartmental Coordinating Committee for Women (ICCW), said the ICCW strongly opposes HB 378. She said the bill would provide preference in securing and retaining employment for veterans at the expense of those who have already been hindered in finding employment. She said HB 378 would impede the efforts of the state of Montana to provide equal employment opportunities for all applicants. (See EXHIBIT 5.)

KYLE OLSON, Assistant City Manager of Great Falls, said he does not feel HB 378 clarifies procedures for employment, reappointment or continued employment. He asked the committee to either table HB 378 or amend it.

CELINDA LAKE, representing the Women's Lobbyist Fund, said the Women's Lobbyist Fund does not oppose veterans' preference. They feel HB 378, in its present form, is unworkable and goes beyond the commitments that have been made and what would be fair to all disadvantaged groups. Ms. Lake said HB 378, in its current form, would make any type of affirmative action in hiring and promotion impossible. We should not, in this state, remedy one form of discrimination by de facto invoking another. (See EXHIBIT 6.)

DEBI FLENTIE, representing the Department of Revenue, said the Department of Revenue is vitally concerned with maintaining fair hiring practices. Because of this, the current veterans

and disabled civilians employment preference law has been a stumbling block for hiring officials. House Bill 378 does not offer substantial clarification on the preference issue. She said SB 197 offers new substance and clarification to the problems that now exist. Senate Bill 197 reflects compromise legislation reached by veterans' groups, handicapped groups and representatives of state and local government. She asked this committee's consideration of the provision of SB 197. (See EXHIBIT 7.)

CLAUDIA CRONEN said she was testifying on behalf of her husband because he was not able to attend the hearing. (See EXHIBIT 8.)

MARY LISA PRYNE, a veteran of the United States Navy, testified in opposition to HB 378. Ms. Pryne said HB 378 proposes to extend absolute veterans' preference beyond the scope of initial hiring. This proposed bill would have the effect of perpetuating discrimination on other minority groups. She said she has experienced job discrimination first hand, not because she is a veteran, but because she is a woman. House Bill 378 would ensure that that discrimination continues. She urged this committee to adopt an adverse committee report. (See EXHIBIT 9.)

FRED EASY, an opponent to HB 378, asked the committee to consider amending HB 378 giving a preference in appointments to be made through establishment of a uniform point scale. All veterans would be awarded ten points and veterans who have received a disability determination or purple heart would be awarded an additional ten points. He also said he supports the testimony given by Dennis Taylor.

WES KRAWCZYK, chairman of the Legal Council for the University of Montana, said the problem with the act is that the veterans' preference is in a total state of confusion. While in this state of confusion is not the proper time to extend the preference act into areas where it doesn't now exist. Because of the confusion, the ACLU of Montana has misgivings about this bill.

REPRESENTATIVE CAROL FARRIS, District 41, asked to be listed as an opponent to HB 378.

REPRESENTATIVE BRAND, in closing, said he, too, is a veteran. He never took advantage of any acts provided for veterans but he is trying to prove that veterans have to have preference.

REPRESENTATIVE BRAND said every opponent wants to water down the Veterans' Preference Act. He said he is not against women or positions they desire but he is opposed to the offered amendments.

REPRESENTATIVE BRAND said department heads are laying off people and are picking and choosing the people to be laid off. If the Veterans' Preference Act is watered down, there would be no

preference on who could still be working after a layoff. He said department heads know how to determine the act but just do not want to. We are trying to retain what is in existence.

The hearing on HB 378 was closed.

HOUSE BILL 384

REPRESENTATIVE JOE HAMMOND, District 24, sponsor of HB 384, said the bill provides protection for employees' wages will also provide for a bond to be waived if the owner of the business has complied with the provisions for three years.

REPRESENTATIVE HAMMOND said there will be some amendments offered.

Proponents

DAVE HUNTER, Commissioner of Labor and Industry, said HB 384 is a bill that has been discussed before. The act was enacted by the 1975 Legislature and attempts to repeal the act have been put before the 1977, 79 and 81 Legislatures. This time, there is a compromised legislation. He said the reason for the bonding of restaurants, bars and taverns, and not all businesses, came about is because the wage claims and high bankruptcy rate among those three businesses are much higher than with other businesses. The current act applies only to restaurant, bar or tavern owners who operate on leased or rented property. If an owner rents the property, there wouldn't be any tangible property to be collected in cases of bankruptcy or wage claims. If the owner of one of those businesses owns the property, the bank gets the property, in bankruptcy cases, so the Department of Labor and Industry still can't protect the workers.

MR. HUNTER said HB 384 broadens the bonding protection from people in leased premises to owners of premises. The bill limits to three years, the amount of time the bond would be required. Mr. Hunter said 61% of all bars, restaurants and taverns in Montana will fail in the first three years and that is why the department wants the bond for the first three years of a business's existence.

MR. HUNTER said the Commissioner of Labor and Industry will have the option, if HB 384 passes, to go back and impose a second bond when necessary. The intention of the bill would be to require a bond for three years. After that, the bond will be waived unless the employer becomes delinquent on payments or starts having wage claims filed against him. Additional bonding could be imposed in those cases.

MR. HUNTER passed out copies of amendments proposed to HB 384. (See EXHIBIT 10.) If HB 384 is passed with the amendments, it will provide better compliance for workers who have not been paid wages; it will be more fair to employers; and the staff of the Department of Labor will be better used to target efforts to make sure the bonds are received and to retrieve wages of employees who have not been paid.

KATHY VAN HOOK said the Women's Lobbyist Fund supports HB 384 because it is a bill that protects restaurant employees, the majority of whom are women.

SEYMOUR FLANAGAN, International Organizer for Hotel Employees and Restaurant Employees, International Union AFL-CIO, read a prepared statement to the committee. (See EXHIBIT 11.)

ROLAND D. PRATT, lobbyist for the Montana Restaurant Association, said that association concurs with HB 384, as amended.

DON JUDGE, representing the Montana State AFL-CIO, said they would not support any measure which would weaken this essential wage protection, but since most failures occur in the first three years of business, and the bonding requirement for that period is now extended to all bar and restaurant employers, this is a reasonable revision of the act. He asked this committee's support of HB 384. (See EXHIBIT 12.)

MARGARET FLANAGAN, representing Hotel Employees and Restaurant Employees Local 533, rose in support of HB 384.

FRANK SULLIVAN, representing Hotel Employees and Restaurant Employees Local 457, said he supports HB 384. It is a law which needs more "teeth" which is provided for in the bill.

There were no opponents testifying on this bill.

REPRESENTATIVE JONES asked Mr. Hunter if he would agree to an amendment to bond all businesses that are on leased premises. Mr. Hunter said he would have to look at the data but the reason for only bonding restaurants and bars is because of the high bankruptcy and wage claims involved with those businesses.

The hearing on HB 384 was closed.

HOUSE BILL 390

REPRESENTATIVE KELLY ADDY, District 62, sponsor of the bill, said HB 390 is an act to define unfair labor practices by health care facilities and labor organizations representing nurses; to establish procedures for adjudicating unfair labor practices

charges; and to resolve appropriate unit and representation questions consistent with the public employees collective bargaining provisions.

Proponents

EILEEN ROBERTS, representing the Montana Nurses Association, rose in support of HB 390.

CHAD SMITH, representing the Montana Hospital Association, said they are the principal health care employers and they support the bill.

There were no opponents testifying on HB 390.

The hearing on HB 390 was closed.

CHAIRMAN WILLIAMS called the meeting into Executive Session.

EXECUTIVE SESSION

REPRESENTATIVE HARPER moved HB 390 DO PASS.

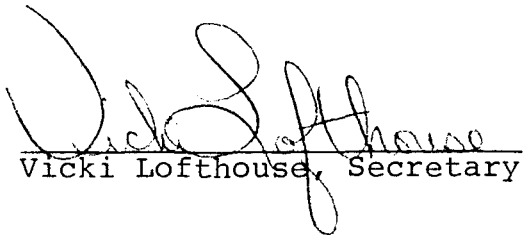
The motion was voted on and PASSED with all committee members present voting yes. Representative Pavlovich left a proxy vote, voting yes. Representative Seifert and Hannah were not present during the vote.

REPRESENTATIVE DRISCOLL said, in fairness to the minority party, this committee should not take any more executive action until all committee members were present.

CHAIRMAN WILLIAMS said he would delay any more executive action until next week because some of the bills to be voted on are controversial bills.

The meeting was adjourned at 9:00 p.m.


MEL WILLIAMS, Chairman


Vicki Lofthouse, Secretary



Montana Association Of Conservation Districts

1-28
7 Edwards
Helena, Montana 59601
Ph. 406-443-5711

HB 260

Mr. Chairman, Members of the Committee:

The real question raised by HB 260 is whether the Montana Legislature should use the Resource Indemnity Trust Account to enhance the state's resource base outside of a mining area or use the funds to mitigate adverse mining impacts, or both. In the New American Webster Dictionary (c 1972), indemnity is defined as "1. what is paid as compensation or reimbursement, 2. Security against damage or loss, 3. exemption from liability." And now the legislature must decide which definition to operate under as per the intent of the drafters of HB 97 in 1973 legislature.

Larry Fasbender, sponsor of the original bill spoke about a "legacy fund" and that "we as Montanans will have to answer to future generations." The policy statement of 15-38-102 contains the sentence "therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure." From these statements I submit that the legislature may appropriate these funds to guarantee future benefits of renewable resources for the people of Montana. And renewable resources include maintaining a quality water supply and productive soil base.

The proponents speak of the RIT funds as an insurance policy against adverse impacts directly related to extraction of non-renewable resources. This in fact is a provision of the policy statement in 15-38-102.

As for the third definition of indemnity, it is doubtful that the people of Montana would collect a small tax and then say to a mine operator "you are now exempted from liability for damage you do the environment."

We feel that the statement to be added by HB 260 is redundant and therefore not needed. It is up to the legislature to decide when it meets where the RIT funds can be used to best enhance the environment and do the most good for the people of Montana.

We recommend a "Do Not Pass" on HB 260.


Steven R. Meyer
Executive Vice President

SRM:dv

Ex. 1

MONTANA STATE COUNCIL No. 9
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
Affiliated With A.F.L.-C.I.O.



Gerald W. McEntee
International President

William E. Lucy
International Secretary-Treasurer

COUNCIL OFFICERS

John P. Walsh, President
1215 West Gold
Butte, MT 59701
Phone: 792-4816

Anna Davis, Secretary
1112 5th St
Deer Lodge, MT 59722
Phone: 846-3308

George E. McCammon, Treasurer
Rte. 1, Box 144
Townsend, MT 59644
Phone: 266-3592

January 28, 1983

TESTIMONY ON HOUSE BILL NO. 378

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

VICE PRESIDENTS

William Anderson
440 South Jordan
Great Falls, MT 59401
Phone: 232-3304

James Cook
617 3rd Avenue
Butte, MT 59501
Phone: 265-4489

William McMullin
920 Anchor Street
Helena, MT 59601
Phone: 252-4093

Carolyn Squires
2111 S. 10th St. W
Missoula, MT 59801
Phone: 846-3308

Joe Geraghty
1550 Waterline Road
Butte, MT 59701
Phone: 494-4720

COUNCIL STAFF

Headquarters
John N. Cooke
Helena, MT 59601
Phone: 442-1192

Mr. Nadean Jensen
Executive Director

George F. Hagerman
Field Representative

James Donaldson
Field Representative

Therette McLane
Office Secretary

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

My name is Nadean Jensen, and I am the executive director of the American Federation of State, County and Municipal Employees, AFL-CIO, Montana Council No. 9.

I am here to support veteran's preference, but to urge you to amend House Bill 378 from its present form.

I am a veteran and served during the Korean Conflict. As a veteran I know the problems that veterans have, and I know that many deserve special treatment for having served our country. But as a woman, I also know that other groups, like women, minorities and the handicapped also deserve special treatment because of past discriminatory practices in many employment situations.

And as a union leader, I know that any bill which restricts collective bargaining, as this one does, is not in the best interests of workers, however good the intention might be.

First let's look at a veteran's preference. Support for it is not just my personal opinion, it is also the position of AFSCME and of the Montana State AFL-CIO.

The Montana State AFL-CIO has consistently supported preference for veterans. The latest resolution, from the 1982 convention, states, "...this organization deplores each and every attempt to degrade, dilute or modify the historical precedent of giving job eligibility preference to those who were taken from their communities to serve their country in time of war, and that the President, the Congress of the United States, the Governor and the State Legislature of Montana reject any and all proposed legislation that would reduce employment opportunities in federal and public employment."

That resolution was submitted by the Montana State Building and Construction Trades Council, and was passed by the delegates to the 1982 Montana State AFL-CIO Convention.

But I believe that the state and national labor federations do not support veteran's preference at the expense of other groups which also deserve a break in employment, namely women, minorities and the handicapped.

Following the controversial Bakke decision in 1978, the AFL-CIO Executive Council stated: "...this is the appropriate occasion to reaffirm the AFL-CIO's long-standing commitment to affirmative action in open doors previously shut to women and minorities.

"It continues to be necessary to take affirmative steps to alleviate the historical burden of discrimination carried too long by women and minorities. We, therefore, favor aggressive, positive efforts to integrate, instead of mere passive agreement not to discriminate.

"In this context, affirmative action must include recruiting, hiring, counselling, training, upgrading and promoting minorities and women. Those words state the essence of our outreach programs to prepare for employment and to place minorities and women in occupations where they are not sufficiently represented. These programs maintain standards, accept the validity of nondiscriminatory testing, bar quotas or unfair preferential treatment. Our programs work and work well. They do so without undermining society's commitment to fair treatment to all."

There is another important reason that women and minorities in particular should not be discriminated against in favor of veterans. Such a move will certainly be challenged vigorously in the courts, on two grounds. The first charge is that this would discriminate against women and minorities. The second charge is that it would negate union contracts.

The 1972 Montana Constitution clearly states, in Article II, Section 35, that "The people declare that Montana servicemen, servicewomen and veterans may be given special considerations determined by the legislature."

I believe that all of us would support that.

But that cannot conflict with Article II, Section 4, which includes the statement, "Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." In short, Montana already has an equal rights provision for women and minorities in its constitution.

Montana also has two sections of state law, which I do believe could give rise to doubt the enforceability of House Bill 378.

Section 49-1-102, gives the right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age or national origin. It goes on to say that, "This right shall include, but not be limited to the right to obtain and hold employment without discrimination..."

And in section 49-2-303, discrimination in employment is outlawed for any of the reasons of ethnic minority status, sex and so on. So House Bill 378 would seem to open the door to lawsuits by conflicting with state law and the constitution.

The labor movement also supports equal rights at the national and the state level. The latest resolution supporting the ERA is from the 1982 Montana State AFL-CIO convention. Like the veteran's preference resolution, it also was introduced by the Montana Building and Construction Trades Council, and was passed by the Montana State AFL-CIO delegates.

Although I am a veteran, as are other women, it is true that the armed services discriminates against women. At present, women are allowed to constitute only 10% of this nation's armed forces. That means that veterans are, by national policy, 90% male. So while veterans may need special consideration in employment, to do so at the exclusion of other groups would definitely be discriminatory against women.

The other conflict with the Montana Constitution comes in Article II, Section 31. That section outlaws, among other things, "any law impairing the obligation of contracts."

I am a veteran and a women, but I am also a union leader. When we negotiate contracts in good faith, it is maddening to see the legislature try to negate those contracts.

As House Bill 378 is written, it gives preference to veterans not only in hiring, but also in "reappointment...and continued employment." That means to me that veterans would have preference over employees who had greater seniority, and who deserved to remain employed under our union contracts. Seniority has been an item that unions have fought for over the last several decades. When seniority is equal, then we support retention rights for veterans and women and minorities and the handicapped. But otherwise unions have sided with the workers who have been employed the longest.

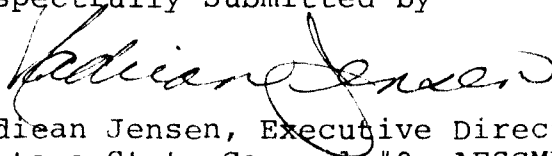
Unions do not make those decisions unilaterally, of course. Contracts are ratified by union members and signed by unions and employers alike, so the process involves a give and take. House Bill 378 would restrict the collective bargaining rights of unions even farther, and it would appear to negate contracts already signed, which we believe would be a violation of the Montana Constitution.

As a veteran I support veteran's rights. As a woman, I support women's rights, and also rights for minorities and the handicapped. But as union leader, I support the rights for union members to negotiate contracts and have them be binding, without interference from the legislature.

I support veteran's preference, but I am forced to oppose House Bill 378 In its present form, but would support this bill if it were amended to provide for equal treatment of veterans, minorities and the handicapped; and, if it were amended to provide that its provisions would not impair or abridge the obligations of employment relations contained in collective bargaining contracts.

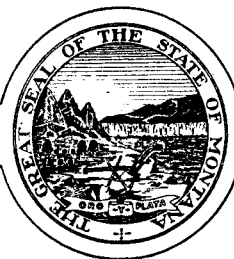
Thank you.

Respectfully Submitted by

A handwritten signature in cursive script, appearing to read "Nadiean Jensen".

Nadiean Jensen, Executive Director
Montana State Council #9, AFSCME, AFL-CIO

DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION



TED SCHWINDEN, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 449-3871

HELENA, MONTANA 59620

TESTIMONY OF DENNIS M. TAYLOR, ADMINISTRATOR, PERSONNEL
DIVISION, DEPARTMENT OF ADMINISTRATION CONCERNING HOUSE
BILL NO. 378 PRESENTED TO THE HOUSE COMMITTEE ON LABOR
AND EMPLOYMENT RELATIONS ON JANUARY 28, 1983

Mr. Chairman and Committee Members, my name is Dennis Taylor and I am the Administrator of the State Personnel Division in the Department of Administration. I appear before you today in opposition to HB378 as it currently reads.

Interest in legislation on the Veteran's Preference Act was initiated by Crabtree vs. State Library in the spring of 1982. Employers and veterans were concerned about clarifying: (1) what the preference meant (was it an absolute entitlement or a tie-breaker?) and (2) the procedure for applying the preference.

Veterans organizations (VFW and American Legion) passed resolutions this summer supporting clarification of the law in these two areas.

The state has been administering the act as a tie-breaker between substantially equal applicants, but many public agencies do not apply the act either because they are unaware of it or because the act is too vague and difficult to interpret.

The act was passed in 1921 and amended to include handicapped civilians in 1927. Because of the vagueness and lack of definition, veterans and disabled people have (at least in recent years) seldom received preference.

If you examine the law, you will see that it is very difficult to interpret or use. It talks about "preference" but does not say what it is or how it will be provided. It provides no procedure for applying preference. It includes no definitions of the terms used in the act.

Last summer, the state worked with veterans organizations, handicapped advisory organizations, and other public employers to determine what needed to be done with the act to make it workable. The following areas were identified:

1. The nature of the preference needed to be clarified as a tie-breaker rather than an absolute preference or entitlement.
2. The procedures for applying the preference needed to be clarified.
3. Rulemaking authority was needed to effectively administer the preference.
4. Terms needed to be clearly defined.

All the parties agreed that something needed to be done by the 48th Legislature to clarify the preference law. HB378 addresses none of these concerns:

1. It does not define or explain what the preference is or how it will be applied.
2. It provides no procedures or definitions.

Starting last summer an intense effort was made by the state to come up with a bill which would clarify the law and would be agreeable to all the concerned groups. This effort resulted in a compromise bill introduced by Senator Joe Mazurek, SB197.

SB197 represents a compromise which took considerable effort on the part of all the groups to negotiate. A compromise which the veterans groups were informed of, had input on, and agreed to support.

SB197 includes retention and reappointment languages as does HB378. This was language the veterans wanted. The State acquiesced to this language solely to gain a compromise bill which would include the definitions and procedures needed by public employers. The State agreed to this language in good faith in order to reach a compromise position that all parties could agree to with the hope of preventing several different pieces of legislation being introduced in the 48th Legislature, thereby confusing an already complex issue.

HB378 is an attempt to include the retention and reappointment language without including any of the other compromise language needed by public employers.

This bill does nothing to address the potentially severe problems caused by the Crabtree vs. State Library case no matter which way the Montana Supreme Court may rule when that case is argued before them March 1, 1983.

I also believe it will not be in the best interests of veterans or disabled persons to leave the preference law in this form without the clarifications provided in the senate bill.

The current law is vague and ill-defined. It is a law which public employers have been unable to effectively implement. They don't know how. Without substantial amendment, HB378 does nothing to correct these problems.

SB197 would provide a law which could be affirmatively, fairly, and consistently administered by public employers. Failure to clarify this law now will mean at least two years of court battles for public employers and veterans. Some of these court battles have already begun.

I urge you to table HB378 and to defer to the Senate until that body has a chance to fully consider SB197. If, however, in your judgement you feel a need for the House to act on HB378, please include the following amendments. If these amendments were included in HB378, the State would no longer be in opposition to HB378.

SUGGESTED AMENDMENTS TO HB378 (REP. BRAND)

1. Title, line 6.

Following: "EMPLOYMENT"

Insert: "AND TO CLARIFY THE NATURE OF THE PREFERENCE AND THE PROCEDURES FOR APPLYING IT;"

2. Title, line 6.

Following: "AMENDING"

Strike: "SECTION 10-2-203"

Insert: "SECTIONS 10-2-201 THROUGH 10-2-206"

3. Page 1.

Following: line 8

Insert: "Section 1. Section 10-2-201, MCA, is amended to read:
"10-2-201. Purpose. The purpose of 10-2-201 through 10-2-206
[Section 7] is to provide for preference of veterans, their
certain dependents and--unremarried--surviving--spouses, of
veterans, and certain disabled civilians in initial appointment
and reappointment and to employment and retention in employment
in every public department and-upon-all-public-works of the
state of Montana and of in any county-and-city local government
entity thereof."

Section 2. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201
through 10-2-206, [Section 7] the following definitions apply:

(1) "Affected class" means a class of people who currently
suffer employment discrimination or suffer from the continuing
effects of past discrimination based on race, sex or physical
or mental handicap; and where there is evidence demonstrating
past or present underutilization of particular classes by the
public hiring authority.

(2) "Certain dependents of a veteran" means:

(a) the spouse of a disabled veteran unable to use his
preference as a result of a service-connected disability; or

(b) the unremarried surviving spouse and other dependent of
a veteran who died as a result of a service-connected
disability or who died while on active duty.

(3) "Department" means the department of administration
provided for in Title 2, Chapter 15, Part 33.

(4) "Disabled person" means:

(a) a veteran having a service-connected disability de-
termined by the Veterans Administration of the United States;
or

(b) a civilian having a disability determined by the
department of social and rehabilitation services.

(5) "Disability" means a physical or mental condition which
limits a major life activity such as walking, seeing, hearing,
or speaking and which limits the person's ability to find and
hold employment.

(6) "Initial appointment to employment" is the act of hir-
ing a person not currently employed with that jurisdiction.

(7) "Preferred person" means a:

- (a) veteran;
- (b) disabled person; or
- (c) certain dependents of veterans.
- (8) "Public hiring authority" means:

(a) all departments, offices, boards, bureaus, commissions, agencies, or any other instrumentalities of the government of the state of Montana; and

(b) all counties, cities, towns, school districts, and other units of local government and all instrumentalities of local government.

(9) "Reemployment preference" means a preference for employment granted under established policies of a jurisdiction because a person's previous employment in that jurisdiction was terminated as a result of a reduction in force or reorganization.

~~(1)~~ (10) ~~The-term~~ "Veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon under honorable conditions other than-dishonorable; or

(b) who after January 31, 1955:

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and

(ii) were honorably discharged.

~~(2)~~ (11) ~~The-term-~~war "War or declared national emergency" includes:

~~(a) The-Civil-War;~~

~~(b) The-Spanish-American-War;~~

~~(c) The-Phillipine-insurrection;~~

~~(d)~~ (a) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

~~(e)~~ (b) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive;

~~(f)~~ (c) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and

~~(g)~~ (d) The Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive.

~~(3) The-term-"surviving-spouse"-means-an-unremarried surviving-spouse-of-a-veteran-~~

~~(4) The-word-"percent"-means-percent-of-the-total-aggregate points-of-the-examination-referred-to."~~

Renumber: subsequent section

4. Page 1, line 11.

Following: "continued employment"

Strike: "(1) In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment, and reappointment, employment, and retention in employment: veterans, their spouses and surviving spouses, and the other dependents of disabled veterans, and disabled civilians recommended by the rehabilitative services division of the department of social and rehabilitation services.

(2) Age, loss of limb or other physical impairment which does not in fact incapacitate, does not disqualify any disabled veterans or civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved.

(3) Those of the above-described veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of the wars, military expeditions, or police actions, whenever such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

Insert: ~~"In Every public-department-and-upon-all-public-works-of the-state-of-Montana-and-of-any-county-or-city-thereof,-the following public hiring authority shall be-preferred-for give preference as provided in 10-2-204 in: initial appointment and reappointment to employment and retention in employment and to employment: veterans,-their-spouses-and-surviving-spouses,-and the--other--dependents--of--disabled--veterans,-and--disabled civilians-recommended-by-the-rehabilitative-services-division of-the-department-of-social-and-rehabilitation-services to preferred persons.~~

~~{2} Age,-loss-of-limb-or-other-physical-impairment-which does-not-in-fact-incapacitate,-does-not-disqualify-any-disabled veterans-or-civilian-provided-he-or-she-possesses-the-business capacity,-competency,-and-education-to-discharge-the-duties-of the-position-involved-~~

~~{3} Those-of-the-above-described-veterans-who-have-disabil ities-admitted-by-the-veterans-administration-of-the-United States-to-have-been-incurred-in-service-in-any-of-the-wars, military--expeditions,--or--police--actions,--whenever--such disabilities--do--not--in-fact-incapacitate,--shall--be--given preference-in-employment-over-other-veterans-~~

~~10-2-204. Credit-for-Examination: {1} When-written-or oral--examinations--are--required--for--employment,--disabled veterans-and-their-spouses,-their-surviving-spouses,-and-other dependents-shall-have-added-to-their-examination-ratings-a credit--of--10-points.---All--other-veterans,-their--spouses, surviving-spouses,-and-dependents-shall-have-added-to-their examination-ratings-a-credit-of-5-points."~~

Section 4. Section 10-2-204, MCA, is amended to read:

"10-2-204. Administration of Preference: (1) Whenever scored procedures are used to establish an employment list and a preferred person attains a passing score, ten percentage points shall be added to the score of a disabled person and five percentage points shall be added to the score of all other preferred persons.

(2) The fact that an applicant has claimed a veterans¹ credit preference may not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit preference.

~~{3} The-benefits-of-this-section-are-in-addition-to-and-not~~

~~in derogation of the preference in appointment and employment or both given by 10-2-203.~~

(3) Whenever scored procedures are not used, a preferred person shall be appointed to the position over others of substantially equal qualifications. Disabled persons shall be appointed to the position over other preferred persons of substantially equal qualifications.

(4) During a reduction in force or reorganization, a preferred person shall be retained for employment over non-preferred persons with substantially equal job duties, qualifications, performance records, and length of service; unless the non-preferred person is a member of an affected class.

(5) During rehiring following a reduction in force, a preferred person shall be reappointed to employment over non-preferred persons with substantially equal qualifications, past performance and length of service, except where the non-preferred person is a member of an affected class.

(6) A preferred person need not be appointed to the position over a non-preferred person who is entitled to claim reemployment preference, except where the preferred person is also entitled to claim reemployment preference."

Section 5. Section 10-2-205, MCA, is amended to read:

"10-2-205. Eligibility. (1) None of the benefits of 10-2-201 through ~~10-2-206~~ [Section 7] accrue to any person who refused to serve on active duty in the military service ~~to which attached or to take up arms~~ in the defense of the United States.

~~(2) No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment is entitled to such preference.~~

(2) It is the preferred person's duty to establish his eligibility for preference and to make his preference known to the public hiring authority.

~~(3) For city and county employment, no preference will be granted unless an applicant under 10-2-201 through 10-2-206 is also a resident of the city or town or county in which employment is sought.~~

Section 6. Section 10-2-206, MCA, is amended to read:

"10-2-206. Enforcement of Preference. (1) Any preferred person ~~entitled to preference in~~ under ~~10-2-201 through 10-2-206~~ who has ~~applied for any initial appointment or to employment upon public works of the state of Montana or with any county and city thereof or in any public department of the state public hiring authority and who has been denied employment or appointment and feels that the spirit of 10-2-201 through 10-2-206 has been violated and that such person is in fact qualified physically and mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for~~ may petition by initial appointment to employment and has not been accorded his rights under 10-2-201 through ~~10-2-206~~ [Section 7] may within 15 days of receipt of notice of the adverse decision make a written request for

appeal to the public hiring authority. ~~to-which-employment application--was~~ made. The public hiring authority shall provide written explanation and shall deliver this explanation to the preferred person within 30 days of the date of his request for appeal.

(2) Within 30 days after the delivery date of the written explanation, the preferred person may file a verified petition with the district court of the state of Montana in the county in which the ~~work-is-to-be-performed~~ application is filed. The petition shall set forth the facts ~~of--the--application, qualifications,--competency,--and--such--person's--honorable discharge-of-other-qualifications~~ warranting the applicant to preference under 10-2-201 through ~~10-2-206~~ [Section 7].

(3) Upon filing of such petition, any judge in the county shall issue an order ~~to-show-cause~~ to the ~~appointing~~ public hiring authority directing the ~~appointing~~ public hiring authority to appear in the court at a specified time and place, not less than 5 ~~10~~ or more than 20 ~~10~~ days after the filing of the verified petition, to show cause, if any exists, why the veteran or person entitled to preference should not be employed by the ~~appointing~~ public hiring authority.

(4) The district court has jurisdiction upon the proper showings to issue its order directing and ordering the ~~appointing~~ public hiring authority to comply with this law in giving the preference provided for.

(5) The Montana Rules of Evidence and Civil Procedure shall be applicable to all court proceedings brought under this section."

NEW SECTION. Section 7. Rulemaking authorized. The department must adopt rules to implement [Title 10, Chapter 2, part 2.]

Section 8. Codification instruction. Section 7 is intended to be codified as an integral part of Title 10, Chapter 2, part 2, and the provisions of Title 10, Chapter 2, part 2, apply to section 7."

-End-

Veteran's and Handicapped Civilian's Preference Bill Drafting Procedure

March, 1982. Following the decision of Crabtree vs. Montana State Library, the Personnel Division, Department of Administration, recognizing the need to clarify the nature and application of the statutory preference law, drafted an issue paper and circulated it to cabinet officers and elected officials of the executive branch. The Division then identified the basic areas that had to be addressed in order to make the statute acceptable to public employers. They include:

- (1) The nature of the preference needed to be clarified as a tie breaker preference between applicants of substantially equal qualifications.
- (2) The procedures for applying the preference needed to be clarified.
- (3) Rule making authority needed to be included to allow effective administration of the Act.
- (4) Terms used in the statute needed to be clearly defined.

In April, 1982, David Hunter, Commissioner of Labor and Industry and Dennis Taylor, Personnel Division Administrator, met with representatives of various veterans organizations to discuss the need for clarifying the existing law. This meeting included Dan Antonietti, Department of Labor, Bob Durkee, VFW and Tony Cumming, American Legion. These veteran organizations requested that draft resolutions be prepared for submittal to their annual conventions calling for the clarification of the preference and the procedures for administering the preference. These resolutions were subsequently passed by the annual conventions of the represented veteran groups during the summer months.

May/June, 1982. A staff report on the veterans and handicapped preference was presented to the Personnel and Labor Relations Study Commission. By unanimous vote, the Study Commission formally adopted the recommendations that:

- (1) the preference be a tie-breaker (Commission Recommendation 24);
- (2) the relationships between the Act and other preferences be clarified (Commission Recommendation 25);
- (3) the veterans preference should not supersede RIF preference; and
- (4) the preference should be limited to initial appointment.

After receiving input from these various sources, the Personnel Division researched the statute and prepared a first draft of legislation

designed to revise the existing statutes. This first draft was widely circulated to interested individuals and organizations for public comment and review. Approximately 150 copies of the draft were circulated. Twenty-five written comments were received from public employers, handicapped groups, women's organizations, and interested individuals.

The majority of the general comments received supported the need to amend the present statute for clarity and administrative purposes. The comments received also supported the administration of preference "over others of substantially equal qualifications." General comments were received both supporting and questioning the fact that the proposed changes give disabled civilians the same preference status as disabled veterans. Several commentators suggested that preference be administered consistent with affirmative action requirements.

July, 1982. The Governor's Committee on Employment of the Handicapped discussed the preference act and agreed to draft a formal legislative proposal to change the law.

September, 1982. After reviewing the written comments and the discussion of the Governor's Committee on Employment of the Handicapped, the Personnel Division prepared a second draft of the legislation. This draft was distributed on September 30 to the same organizations and individuals as the first draft. Two written comments were received.

October, 1982. A working group representing the major groups concerned with the employment preference issue was formed and a meeting was held on October 20, 1982. The working group members were:

- Senator Joe Mazurek - Meeting Facilitator
- John Mahan - representing veterans organizations
- Bob LeMieux - representing the Governor's Committee on Employment of the Handicapped and handicapped advisory organizations
- Alex Hanson - representing local government
- Dennis Taylor - representing state government
- Mark Cress - Chief, Employee Relations Bureau
- Barb Charlton - Handicapped Employment Coordinator
- Pat Schaeffer - Legal Counsel, Department of Administration

The purpose of the meeting was to come to mutual agreement on revisions to the bill for presentation to the 48th Legislature. The working group agreed to all changes except the group could not agree whether the preference should be limited to initial appointment or should also extend to retention and reemployment during reduction in force. The working group asked the Personnel Division to draft alternate language extending preference to retention and rehire during reduction in force for further discussion.

The Personnel Division then prepared a third draft and an alternate third draft. The alternate extended the preference to reductions in force. Copies of these drafts were sent to the Governor's Committee on

Employment of the Handicapped (GCEH), the Intergovernmental Coordinating Committee for Women (ICCW), the Governor's Committee on Women and Employment, and the various veteran's organizations.

The GCEH discussed the revised drafts at their October 26, 1982 meeting. They voted to support both drafts but preferred the third draft alternative by a one vote margin.

November, 1982. The Governor's Committee on Women and Employment and the ICCW reviewed the drafts in early November and submitted comments to the Governor. They supported the third draft but recommended that protections for affected class members be included in initial appointment sections. They also indicated that the third draft alternative would be preferable to the existing statute.

On November 11, 1982, Dennis Taylor met with Jack Mahan representing the veteran's organization. Mr. Mahan indicated that the veteran's groups were reconsidering their position. A second meeting of the working group was scheduled for early December.

December, 1982. The working group met again on December 13, 1982. The veterans representative raised objections to the use of the term "preferred person," the limitation regarding retired military personnel, and the affected class language. Local government representatives raised concerns regarding reemployment rights and asked that language be included to insure that collective bargaining agreements would be considered policies of a jurisdiction. Agreement could not be reached at that meeting. Therefore, another meeting was held between the members of the working group and representatives from various veterans organizations. The meeting participants were:

Dennis Taylor - Personnel Division Administrator
Mark Cress - Employee Relations Bureau Chief
Robert LeMieux - Governor's Committee on Employment of the Handicapped
Senator Joe Mazurek
Bob Durkee - Veterans of Foreign Wars
Fred MacIntosh - DAV
Dan Antonietti - Department of Labor
Tony Cumming - American Legion
David Armstrong - Administrator, Veterans Affairs Division

The meeting participants agreed to the changes reflected in LC240, the "compromise" fourth draft that was prepared for introduction into the 48th Legislature. The DAV stated they could not actively support the bill unless it dealt only with disabled veterans. However, they agreed not to oppose LC240. All other involved groups - handicapped, veteran, local government and state government agreed to the compromise. Senator Joe Mazurek agreed to sponsor the proposed legislation.

January 11, 1983. The Governor's Committee on Employment of the Handicapped met at a regular meeting and unanimously endorsed LC240.

Veteran's and Handicapped Civilian's Preference Act
Comparison of Legislation to Existing Statute

The major objectives of the bill are:

- (1) to clarify the nature of the preference as a tie breaker between applicants who are substantially equally qualified;
- (2) to clarify the procedures for applying the preference;
- (3) to provide for rule making authority; and
- (4) to define terms used in the Act.

Throughout the bill language has been added, deleted or modified to clarify the uncertain meaning of "shall be preferred."

Section 1:

This section clarifies the purpose of the bill by specifically naming the situations in which the preference is to apply. It also eliminates the "upon all the public works language" which technically could force private sector businesses into applying preference in employment when contracting with a public employer. It finally makes clerical changes to the definitions and terminology consistent throughout the bill.

Section 2:

- (1) The affected class definition refers to new sections added in Section 4 of the bill.
- (2) The definition of what dependents are granted preference includes the following changes:
 - (a) The preference currently granted to "spouses of veterans" has been replaced with language which grants preference only to spouses of veterans who died due to service connected reasons or are otherwise unable to personally use the preference because of disability. Other spouses were removed from the definition because of the probable conflict with marital status discrimination law.
- (3) Sections 3 through 9 define terms used in the text of the bill. No major changes are represented. Terms defined include Department, Disabled Person, Initial Appointment to Employment, Reemployment Preference, and Veteran.
- (4) The definition of "war or declared national emergency" has been updated by elimination of the Civil War, Spanish American War, and the Philippine Insurrection.

Section 3:

The application of preference to initial hiring, rehiring and retention in employment has been specifically clarified. Preference would not apply in promotions or other personnel actions.

Sub-section 2 of the current statute would be eliminated by the bill as the point is adequately covered by the Human Rights Act and federal law.

Sub-section 3 of the current statute would also be eliminated although the concept of disabled persons having preference over others is reflected in new language in Section 4.

Section 4:

This section has been rewritten to allow for the application of preference both under scored and unscored procedures.

Sub-section 3 of the current statute would be eliminated with this bill clarifying the concept that the addition of points satisfies the Preference Act.

New sub-sections 4 and 5 have been added to clarify that preference would apply in a reduction in force and subsequent rehires where equal job duties, qualifications, performance records and length of service exist and the breaking of a tie in favor of the preferred person will not create or continue unlawful discrimination.

New sub-section 6 allows the agencies to recall a person with re-employment preference resulting from a reduction in force without violating this statute where there is no veteran or handicapped person with statutory preference and re-employment preference.

Section 5:

Sub-section 2 (one year residency) of the existing statute has been eliminated because of the practical problems associated with verification of residency and the potential conflict with federal law and the U.S. Constitution.

New sub-section 2 puts an affirmative burden on the preferred person to make the preference claim known. This provision is to avoid situations of court action resulting from failure to grant preference where the hiring authority was not aware of the claim to preference.

Section 6:

New sub-sections add an agency level-administrative level review to the enforcement mechanism. New sub-section 3 extends the time limits for the show cause hearing.

New Section 7:

Grants rulemaking authority to the Department of Administration to issue rules to clarify procedure and definitions.

----- BILL NO. -----

INTRODUCED BY -----

AT THE REQUEST OF -----

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE VETERANS AND DISABLED PERSONS PREFERENCE ACT TO CLARIFY THE NATURE OF THE PREFERENCE AND THE PROCEDURES FOR APPLYING IT; AMENDING SECTIONS 10-2-201 THROUGH 10-2-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-2-201, MCA, is amended to read:

"10-2-201. Purpose. The purpose of 10-2-201 through 10-2-206 and [section 7] is to provide for preference of veterans, ~~their~~ certain dependents ~~and-unremarried-surviving spouses,~~ of veterans, and certain disabled civilians in initial appointment ~~and to~~ employment in every public department ~~and-upon-all-public-works~~ of the state of Montana and ~~of~~ in any ~~county--and-city~~ local government entity thereof."

Section 2. Section 10-2-202, MCA, is amended to read:

"10-2-202. Definitions. For purposes of 10-2-201 through 10-2-206 and [section 7], the following definitions apply:

(1) "Affected class" means a class of people who currently suffer employment discrimination or suffer from the continuing effects of past discrimination based on race, sex or physical or mental handicap.

(2) "Certain dependents of a veteran" means:

(a) the spouse of a disabled veteran unable to use his preference as a result of a service-connected disability; or

(b) the unremarried surviving spouse and other dependent of a veteran who died as a result of a service-connected disability or who died while on active duty.

(3) "Department" means the department of administration provided for in Title 2, Chapter 15, part 33.

(4) "Disabled person" means:

(a) a veteran having a service-connected disability determined by the Veterans Administration of the United States; or

(b) a civilian having a disability determined by the department of social and rehabilitation services.

(5) "Disability" means a physical or mental condition which limits a major life activity such as walking, seeing, hearing, or speaking and which limits the person's ability to find and hold employment.

(6) "Initial appointment to employment" is the act of hiring a person not currently employed with that jurisdiction.

(7) "Preferred person" means a:

(a) veteran;

(b) disabled person; or

(c) certain dependents of veterans.

(8) "Public hiring authority" means:

(a) all departments, offices, boards, bureaus, commissions, agencies, or any other instrumentalities of the government of the state of Montana; and

(b) all counties, cities, towns, school districts, and other units of local government and all instrumentalities of local government.

(9) "Reemployment preference" means a preference for employment granted under established policies of a jurisdiction, including a collective bargaining agreement, because a person's previous employment in that jurisdiction was terminated as a result of a reduction in force or reorganization.

(10) ~~††~~ The ~~term~~ "veterans" "Veterans" means persons:

(a) who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon under honorable conditions ~~other-than-dishonorable~~; or

(b) who after January 31, 1955:

(i) served on active military duty for more than 180 days or were discharged or released because of a service-connected disability; and

(ii) were honorably discharged.

(11) ~~(2)~~ ~~The term "war~~ "War or declared national emergency" includes:

~~(a)~~ ~~The Civil War;~~

~~(b)~~ ~~The Spanish-American War;~~

~~(c)~~ ~~The Philippine insurrection;~~

~~(d)~~ (a) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

~~(e)~~ (b) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive;

~~(f)~~ (c) The Korean conflict, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and

~~(g)~~ (d) The Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive.

~~(3)~~ ~~The term "surviving spouse" means an unremarried surviving spouse of a veteran.~~

~~(4)~~ ~~The word "percent" means percent of the total aggregate points of the examination referred to.~~

Section 3. Section 10-2-203, MCA, is amended to read:

"10-2-203. Preference in initial appointment and to employment. ~~In Every public department and upon all public~~

~~works-of-the-state of-Montana-and-of-any-county-or-city thereof,-the-following~~ Every public hiring authority shall be-preferred-for give preference as provided in 10-2-204 in initial appointment and to employment: to veterans,-their spouses-and-surviving-spouses,-and-the-other-dependents-of disabled-veterans,-and-disabled-civilians-recommended-by-the rehabilitative-services-division-of-the-department-of-social and-rehabilitation-services preferred persons.

(2) ~~Age,-loss-of-limb-or-other-physical-impairment which-does-not-in-fact-incapacitate,-does-not-disqualify-any disabled-veterans-or-civilian-provided-he-or-she-possesses the-business-capacity,-competency,-and-education-to discharge-the-duties-of-the-position-involved.~~

(3) ~~Those-of-the-above-described-veterans-who-have disabilities-admitted-by-the-veterans-administration-of-the United-States-to-have-been-incurred-in-service-in-any-of-the wars,-military-expeditions,-or-police-actions,-whenever-such disabilities-do-not-in-fact-incapacitate,-shall-be-given preference-in-employment-over-other-veterans.~~

Section 4. Section 10-2-204, MCA, is amended to read:

"10-2-204. ~~Credit-for-Examination.~~ Administration of preference. (1) ~~When-written-or-oral-examinations-are required-for-employment,-disabled-veterans-and-their spouses,-their-surviving-spouses,-and-other-dependents-shall have-added-to-their-examination-ratings-a-credit-of-10~~

~~points.---All---other---veterans,---their---spouses,---surviving spouses,---and---dependents---shall---have---added---to---their examination-ratings-a-credit-of-5-points.~~ (1) Whenever scored procedures are used to establish an employment list and a preferred person attains a passing score, ten percentage points shall be added to the score of a disabled person and five percentage points shall be added to the score of all other preferred persons. Such percentage points may not be used to appoint a preferred person over a substantially equally qualified non-preferred person who is a member of an affected class, where there is evidence demonstrating past or present underutilization of the affected class by the public hiring authority involved.

(2) The fact that an applicant has claimed a veterans' credit preference may not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's-credit preference.

~~(3) The-benefits-of-this-section-are-in-addition-to and-not-in-derogation-of-the-preference-in-appointment-and employment-or-both-given-by-10-2-203.~~ Whenever scored procedures are not used, a preferred person shall be appointed to the position over non-preferred persons of substantially equal qualifications except where the non-preferred person is a member of an affected class and

there is evidence demonstrating past or present under-utilization of the affected class by the public hiring authority involved. Disabled persons shall be appointed to the position over other preferred persons of substantially equal qualifications.

(4) A preferred person need not be appointed to the position over a non-preferred person who is entitled to claim reemployment preference, except where the preferred person is also entitled to claim reemployment preference."

Section 5. Section 10-2-205, MCA, is amended to read:

"10-2-205. Eligibility -- duty of preferred person.

(1) None of the benefits of 10-2-201 through 10-2-206 and [section 7] accrue to any person who refused to serve on active duty in the military service ~~to which attached or to take-up arms~~ in the defense of the United States.

(2) ~~No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment is entitled to such preference.~~ It is the preferred person's duty to establish his eligibility for preference and to make his preference known to the public hiring authority.

(3) ~~For city and county employment, no preference will be granted unless an applicant under 10-2-201 through 10-2-206 is also a resident of the city or town or county in which employment is sought.~~ Retired members of the armed forces are not eligible for preference, unless they are a disabled person."

Section 6. Section 10-2-206, MCA, is amended to read:

"10-2-206. Enforcement of preference. (1) Any ~~preferred person entitled to preference in--10-2-201 through~~ 10-2-206 who has ~~applied for any appointment or employment upon public works of the state of Montana or any county and city thereof or in any public department of the state and who has been denied employment or appointment and feels that the spirit of 10-2-201 through 10-2-206 has been violated and that such person is in fact qualified physically and mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for may petition by~~ has not been accorded his rights under 10-2-201 through 10-2-206 [section 7] may within 15 days of receipt of notice of the appointment decision make a written request for appeal to the public hiring authority to which employment application was made. The public hiring authority shall provide written explanation and shall deliver this explanation to the preferred person within 30 days of the date of his request for appeal.

(2) Within 30 days after the delivery date of the written explanation, the preferred person may file a verified petition with the district court of the state of Montana in the county in which the ~~work is to be performed~~ application is filed. The petition shall set forth the ~~facts of the application, qualifications, competency, and such person's honorable discharge of other qualifications~~

warranting the applicant to preference under 10-2-201 through 10-2-206 and [section 7].

(3) Upon filing of such petition, any judge in the county shall issue an order ~~to-show-cause~~ to the ~~appointing~~ public hiring authority directing the ~~appointing~~ public hiring authority to appear in the court at a specified time and place, not less than 5 10 or more than ~~10~~ 20 days after the filing of the verified petition, to show cause, if any exists, why the veteran or person entitled to preference should not be employed by the ~~appointing~~ public hiring authority.

(4) The district court has jurisdiction upon the proper showings to issue its order directing and ordering the ~~appointing~~ public hiring authority to comply with this law in giving the preference provided for.

(5) The Montana Rules of Evidence and Civil Procedure shall be applicable to all court proceedings brought under this section."

NEW SECTION. Section 7. Rulemaking authority. The department must adopt rules to implement this part.

NEW SECTION. Section 8. Codification instruction. Section 7 is intended to be codified as an integral part of Title 10, Chapter 2, part 2, and the provisions of Title 10, Chapter 2, part 2, apply to section 7.

-End-



Ex. 4

Laborers' International Union of North America, AFL-CIO

Local No. 254

P. O. BOX 702
110 N. WARREN
HELENA, MT 59624
(406) 442-1441

Testimony of Eugene Fenderson, before the House Committee on Labor and Employment Relations, on House Bill 378, January 28, 1983

I am Gene Fenderson, business manager of Laborers Local 254, AFL-CIO. I am here to speak against House Bill 378 which would extend the veterans' appointment and preference act to include reappointment and continued employment.

First of all, I would emphasize that I am not speaking against veterans preference itself, but I believe there are some distinctions which must be made when addressing this issue. The concept of veterans preference arose from a praiseworthy effort to compensate in some way the time veterans had lost from the job market because of their service during a war or armed conflict. Giving these veterans preference has helped make up for their loss of employment opportunity while they defended their country.

That concept is recognized in a resolution submitted by the 31st annual convention of the Montana State Building and Construction Trades Council, AFL-CIO, and adopted by the Montana State AFL-CIO convention in 1982. The resolution states:

"... that this organization deplores each and every attempt to degrade, dilute or modify the historical precedent of giving job eligibility preference to those who were taken from their communities to serve their country in time of war [emphasis added] and that the President, the Congress of the United States, the Governor, and the State Legislature of Montana reject any and all proposed legislation that would reduce employment opportunities for veterans in federal and public employment."

There are two points I would like to make regarding that resolution. First of all, this bill expands employment opportunities for veterans, a measure which is not addressed in the resolution. Secondly, the resolution specifically mentions veterans who served their country in "time of war".

Veterans preference is supposed to equalize employment opportunities for veterans, not to give them an added advantage at the expense of other groups, such as women, minorities and the handicapped.

Many veterans who enjoy veterans preference did not serve in time of war. They chose to serve in the armed forces to learn a specific skill or to receive certain veterans benefits, such as the G.I. bill to further their education. Others chose the service as a full-time career. These individuals were not deprived of any opportunity to gain employment. They made the choice of their own free will. Some retired career veterans utilize veterans preference to obtain employment with government agencies, while at the same time they are drawing military retirement and other benefits.

I ask that you vote against House Bill 378 which expands veterans' preference at the expense of other groups which have traditionally been denied equal employment opportunities.

Thank you.

My name is Jan Gilman and I represent the Interdepartmental Coordinating Committee for Women (ICCW) a committee formed by the Governor to identify policies and procedures in state government which directly or indirectly result in discrimination against women. The ICCW has been closely following the issue of employment preference for veterans and handicapped individuals. We feel it is imperative to support a more equitable approach to employment preference than that which resulted from the decision in the case of Crabtree vs. The State of Montana. This decision requires the State of Montana to hire a preferred person as long as that person is minimally qualified for the position.

The ICCW strongly opposes HB 378. This bill would provide preference in securing and retaining employment for veterans at the expense of those who have already been hindered in finding employment. Department of Labor and Industry statistics show that even when veterans are at a disadvantage in finding employment, it is women who are at an even greater disadvantage than any other group of applicants. (Source: Montana Annual Planning Information 1983.)

Figures for FY 1980 show that among applicants using the state's Job Service offices, the proportion of persons placed in non-agricultural jobs relative to the number of referrals is 72.9% statewide. Handicapped persons, veterans, and Vietnam-era veterans all have placement-to-referral rates which are comparable to the statewide rate. Women, on the other hand, have a placement-to-referral rate of

69.7%, which is significantly lower than the statewide rate. (p-value much less than 0.025)

Figures for FY 1981 show that Vietnam-era veterans have a placement-to-referral rate comparable to the statewide figure of 69.7%. Veterans, handicapped persons, and women, with rates of 68.0%, 67.4%, and 65.1% respectively, are placed at rates significantly lower than the statewide average, with women being placed at a rate which is substantially less than any other group. (p-value much less than 0.025)

Thus we see that among the groups of Job Service applicants, it is the women who are at a disadvantage in finding employment and not veterans or other preferred persons.

In addition, statewide figures showing the starting hourly wages of persons placed by Montana's Job Service offices dramatically illustrate the fact that women continue to fill the lower paying jobs in Montana. In FY 1980, 97.6% of all women placed by the Job Service were hired at rates of less than \$6.00 per hour, whereas only 88.9% of the men were hired at this salary level. On a percentage basis, 4.6 times as many men as women were hired at \$6.00 or more an hour. Figures for FY 1981 show no particular improvement.

Because it applies largely to men, veterans' preference, particularly when administered using the "minimum qualification" criterion, will serve to accentuate this disparity.

State government should not be required to hire and retain minimally qualified individuals. The ICCW has gone on record supporting preference in initial hire for veterans and handicapped individuals as long as substantially equally qualified members of affected classes shown to be underutilized by the public hiring authority are given equal preference. Preference claims should be used as tie-breakers in situations where there are a number of substantially equally qualified applicants for a position.

We do not believe that veterans preference should be a factor in reduction in force, promotion, recall, reorganization or retention decisions.

The state's EEO/Affirmative Action report states (pg. 7) that "because of the operation of seniority-based layoffs, minorities, women and handicapped persons recently hired will likely suffer disproportionately from the federally inspired (reduction in force) actions." Veterans' preference, since it applies mostly to men, will continue the erosion of affirmative action gains made in the past few years. If such preference were to be administered on a "minimally qualified" basis, EEO and Affirmative Action programs in Montana could be set back many years.

HB 378 would impede the efforts of the State of Montana to provide equal employment opportunities for all applicants. For these reasons, the ICCW opposes this bill.

TABLE 33
SELECTED EMPLOYMENT SERVICE STATISTICS
MONTANA: FISCAL YEAR 1980

	<u>Total</u>	<u>Female</u>	<u>Economically Disadvantaged</u>	<u>Minority</u>	<u>Handicapped</u>	<u>Veteran</u>	<u>Vietnam Era Veteran</u>	<u>Under Age 22</u>	<u>Over Age 45</u>
Applicant Active Anytime in Fiscal Year 1980	113,120	51,414	22,040	10,000	7,312	18,576	6,355	35,680	12,107
Counseling	11,124	4,921	5,390	1,399	1,709	2,703	955	3,749	1,053
Testing	6,698	4,766	1,573	557	504	627	224	2,100	446
Referral to Job	46,222	21,399	8,434	3,660	2,804	7,586	2,702	17,251	4,066
Non-Agricultural	44,166	20,982	8,083	3,366	2,664	7,071	2,576	16,559	3,702
Placements	34,224	15,042	6,874	2,856	2,064	5,615	2,032	13,540	2,910
Non-Agricultural	32,195	14,633	6,508	2,563	1,926	5,102	1,905	12,868	2,540
Over 150 Days	20,842	10,970	4,343	1,516	1,302	3,239	1,231	7,559	1,569

Highest School Grade Completed

	<u>Total</u>
0-7	1,825
8-11	28,710
12	49,046
Over 12	33,539

Residence

	<u>Total</u>
Urban	66,982
Rural	46,138

SOURCE: Employment Service Automated Reporting System (ESARS) Tables 8 and 91.

TABLE 34
SELECTED EMPLOYMENT SERVICE STATISTICS
MONTANA: FISCAL YEAR 1981

	<u>Total</u>	<u>Female</u>	<u>Economically Disadvantaged</u>	<u>Minority</u>	<u>Handicapped</u>	<u>Veteran</u>	<u>Vietnam Era Veteran</u>	<u>Under Age 22</u>	<u>Over Age 45</u>
Applicant Active Anytime in Fiscal Year 1981	113,257	51,036	19,501	9,515	6,581	17,681	5,869	33,330	12,441
Counseling	10,831	4,581	5,004	1,296	1,614	2,674	875	2,991	1,087
Testing	8,733	6,431	1,690	730	571	854	330	2,422	647
Referral to Job	46,431	21,872	6,864	3,165	2,371	7,180	2,537	16,480	4,039
Non-Agricultural	44,241	21,277	6,577	2,855	2,270	6,742	2,417	15,652	3,695
Placements	33,084	14,452	5,301	2,393	1,646	5,077	1,797	12,923	2,673
Non-Agricultural	30,831	13,848	4,983	2,066	1,529	4,586	1,658	12,102	2,317
Over 150 Days	20,036	10,700	3,204	1,222	1,015	2,810	1,035	7,163	1,480

Highest School Grade Completed

	Total
0-7	1,774
8-11	26,654
12	50,471
Over 12	34,358

Residence

Urban	67,653
Rural	45,604

Source: Employment Service Automated Reporting System (ESARS)

TABLE 37
INDIVIDUALS PLACED IN JOBS BY SEX AND WAGE
MONTANA: FISCAL YEAR 1980

	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>% Female</u>
Under \$2.90	1,190	1,452	2,642	55.0
\$2.90 - \$3.10	6,457	5,860	12,323	47.6
\$3.11 - \$3.49	2,916	3,529	6,445	54.7
\$3.50 - \$3.99	3,550	2,514	6,064	41.5
\$4.00 - \$4.49	3,988	1,792	5,780	31.0
\$4.50 - \$4.99	1,246	492	1,738	28.3
\$5.00 - \$5.49	2,353	407	2,760	14.7
\$5.50 - \$5.99	519	152	671	22.6
\$6.00 Plus	2,772	405	3,177	12.7

SOURCE: ESARS Table 15.

TABLE 38
INDIVIDUALS PLACED IN JOBS BY SEX AND WAGE
MONTANA: FISCAL YEAR 1981

	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>% Female</u>
Under \$3.10	1,544	1,661	3,205	51.8
\$3.10 - \$3.34	2,128	2,327	4,455	52.2
\$3.35 - \$3.49	4,403	4,825	9,228	52.3
\$3.50 - \$3.99	4,100	3,274	7,374	44.4
\$4.00 - \$4.49	3,760	1,973	5,733	34.4
\$4.50 - \$4.99	1,480	672	2,152	31.2
\$5.00 - \$5.49	2,803	601	3,404	17.7
\$5.50 - \$5.99	632	183	815	22.5
\$6.00 Plus	3,567	603	4,170	14.5

SOURCE: ESARS Table 15.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



TESTIMONY OF CELINDA C. LAKE, WOMEN'S LOBBYIST FUND, ON HB 378 BEFORE HOUSE LABOR AND EMPLOYMENT COMMITTEE

The Women's Lobbyist fund does not oppose veterans' preference. We recognize that veterans like other discriminated groups deserve recognition of the disadvantages they face in hiring. As members of another discriminated class in this society, women fully recognize the discrimination that veterans may face in coming back to civilian life, particularly after something like the Vietnam conflict. Furthermore we as a society have a commitment to veterans who have served us all in good faith and we need to live by that commitment.

We do, however, believe that HB 378 is in its current form unworkable and goes beyond the commitments that have been made, the very real rewards which are deserved, and what would be fair to all disadvantaged groups. In its current form this bill would extend veterans' preference in transfer, promotion, and hiring to all who are only minimally qualified. The courts have been very lenient in their interpretations of what constitutes minimal qualifications. Particularly, in these economic times of high unemployment and layoffs in government, HB 378 in its current form would make it impossible to retain women or minorities in government. Departments would be forced to make lists of veterans and lists of nonveterans and lay off every nonveteran before a single veteran at any level were laid off. We do not believe that veterans, who as a group can first hand relate to the discrimination women have suffered, could possibly intend for preference to be implemented in this form. Thus we believe that HB 378 should be amended to award preference only among substantially equally qualified applicants.

Obviously, HB 378 in its current form would make any type of affirmative action in hiring and promotion impossible. We should not in this state remedy one form of discrimination by de facto invoking another. Veterans' preference would extend to both male and female veterans. But what that ignores is that women have been systematically excluded from military and combat service. We have always been held to a fixed percentage participation in the armed services. Recently, only 10% of the armed forces could be women. In 1971 only 1.5% of the armed forces were female. Furthermore the Reagan administration has moved back from an initiative to involve more women in the armed forces -- limiting women's participation to fewer branches of the service and freezing recruitment to levels below the past administration's level.

What we do about Veterans' preference is particularly important in this state because of the high proportion of Montana men and (when possible) women who have served this country. According to the Veterans' Office we have the third highest per capita rate of veteran status in the nation in Montana. How we formulate veterans' preference will have enormous implications for the employment of other groups.

Also, veterans' preference extends to state government, local government, universities, and schools. These arenas have traditionally been some of the fastest growing, most important sectors -- providing equitable opportunities for women. If we inadvertently operationalize veterans' preference in such a way that it de facto eliminates the possibility of hiring, keeping, and promoting women -- we will

irretrievably set back economic justice in this state. In addition we will tremendously impact our children's well-being and our families' well-being, since 16% of American families are headed by women and 66% of women work for the basic economic necessities of their families.

In Montana's Constitution we can be proud that we have strong language guaranteeing equality between the sexes in employment and other arenas. Because women have been and are systematically excluded from participation in the armed forces and thus from obtaining veterans' preference, veterans' preference in some forms would be illegal given our constitutional commitment to economic equality.

For this reason we further recommend that HB 378 be amended to include affected class language for initial hire, hiring, promotion, and transfer. That is that veterans' preference would only be granted among substantially equal applicants when the competition were not against a member of "an affected class" -- in which event neither applicant would receive preference. We would define affected class as a group which is underutilized in the existing job, compared to their availability in the labor pool.

HB 378 also deals with preference for disabled and handicapped persons -- to whom we have not yet referred. There is no other group in our society which is currently discriminated against as much as handicapped persons. With our amendments handicapped persons would be given preference among substantially equally qualified applicants both because of their specific reference in the bill and because of their being members of an affected class.

In this society veterans, women, and handicapped persons have all suffered discrimination in employment. We believe that we need to recognize each others' mutual disadvantage. For these reasons we support amending HB 378 to include provisions that preference should be granted in initial hire, hiring, transfer, or promotion only among substantially equally qualified applicants and only if the applicants are not competing against members of another disadvantaged group - i.e. an affected class. If these amendments to the current bill do not seem possible, we would urge the committee to pass a bill which did include these provisions. We believe these provisions are fair to all groups, recognize our mutual oppression, are workable, and still reward veterans for the very real contribution that they have made to our way of life.

OPPOSITION - Department of Revenue

HB 378 - AMENDING VETERANS AND DISABLED CIVILIANS PREFERENCE LAW

The Department of Revenue is vitally concerned with maintaining fair hiring practices. Because of this, the current veterans and disabled civilians employment preference law has been a stumbling block for hiring officials. HB 378 does not offer substantial clarification on the preference issue.

We are faced with the ambiguous language of the current preference; and on the other hand, we have the Montana Human Rights Act which prohibits discrimination of protected classes. We are at odds there on the application of preference. Even if the Crabtree vs. Montana State Library decision is upheld in the Montana Supreme Court, we will not have gained further understanding on application of preference in light of the Human Rights Act.

In order to continue affording equal opportunity to all job applicants, clarification on the intent and administration of the current law is desperately needed. HB 378 does not eliminate the problems faced by hiring officials. Expensive litigation is a potential result of any hiring accomplished without sharply defined preference guidelines.

SB 197, which addresses the same issue, offers new substance and clarification to the problems that now exist. SB 197 reflects compromise legislation reached by veteran groups, handicapped groups and representatives of state and local government.

We would like to see legislation that would correct confusion in interpretation of the current law. HB 378 does not assist us in achieving fair hiring practices, therefore we do not support HB 378. However, we would urge your consideration of the provisions of SB 197.

The Chair, members of the committee. My name is Richard Cronen, I am a Vietnam era veteran. I respectfully request you to accept the following testimony and that you vote do not pass on HB378.

I believe that such extensive preferential treatment, as has been proposed here, may have constitutional deficiencies; and, at a time of extraordinarily high unemployment and economic instability, it will certainly face many challenges in our courts. In any event, I believe all segments of the public should have an equal opportunity to compete for publicly funded jobs. In addition, preference is of questionable value to the veteran who lacks the skills and training necessary to compete for the jobs.

If this legislature wishes to recognize the service of the state's veterans, I submit that there is more value, to the veteran as well as the employer, in extending job training and re-training benefits, waiving tuition at the state's Universities and Vo-Tech centers, or building upon the skills acquired in the service. The Federal Government has fallen short in providing recognition and needed services to the country's veterans.

Based on recent activity at Fort Harrison, here in Helena, the Federal Government is still reluctant to meet the needs of the veteran. The state can and should take the lead in assessing and meeting the needs of the veteran, including non-job related support and services. Vote yes for veterans and no for HB 378.

Thank you.

Richard W Cronen

1/28/83

January 28, 1983

My name is Mary Lisa Pryne. I am a native of Montana, and a veteran of the United States Navy. I served on active duty for over two years, and on Reserve status for an additional four years. I would like to address the issue of veteran's preference for employment, as defined by Section 10-2-203, MCA.

The traditional intent of statutes granting employment preference to veterans has been twofold: to provide an orderly transition from military to civilian life, and to thank the veteran for time spent in service to his/her country. I believe that these goals have been accomplished quite adequately under existing state and federal laws. Veterans are afforded the opportunity to return to college or vocational-technical school with financial assistance (as much as \$12,000 for a single person), given low-interest home loans, guaranteed re-employment at their former job with no loss of seniority, granted extra points on Civil Service and state qualifying examinations, and given hiring preference over non-veterans.

HB 378 proposes to extend a veteran's preference beyond the scope of initial hiring. This proposed bill would have the effect of perpetuating discrimination on other minority groups. Women, who are excluded by federal law from full participation in the Armed Forces, are also excluded in part from the benefits of veteran's preference. Ethnic and racial minorities have never been afforded full employment opportunities, and their prospects would be further diminished by HB 378. Older workers, often with many years of service to an employer, would be laid off or terminated in preference to a veteran.

I have experienced job discrimination first hand, not because I'm a veteran, but because I'm a woman. HB 378 would ensure that that discrimination continues. I urge you to adopt an adverse committee

House Bill 384

Restaurant, Bar and Tavern Bill Amendments

The amendements to the original printed bill are found on page 4, section 4.

On line 7, the word "may" is changed to "will". Line 7 would then read "commissioner will waive the provisions of 39-3-640 for any".

On lines 17 and 18 delete "commissioner deems it necessary for the protection of the state of Montana or the employees of a".

On line 19 after the word "tavern" insert "defaults on the payment of wages, payroll taxes, or workers' compensation premiums."

Line 17 through the end of section four would then read "the person operating a restaurant, bar or tavern defaults on the payment of wages, withholding taxes or workers' compensation premiums".

TESTIMONY OF: SEYMOUR J. FLANAGAN ON HOUSE BILL 384 BEFORE THE HOUSE
LABOR & EMPLOYMENT RELATIONS .
JANUARY 29, 1983

I am Seymour J. Flanagan, International Organizer for the Hotel Employees and Restaurant Employees International Union AFL CIO .
I am here to testify in support of House Bill 384, a bill which amends the current restaurant, bar and tavern wage protective act.

The current law requires that anyone not owning the building in which he operates a bar, restaurant or tavern must post a bond with the Commissioner of Labor and Industry equal to at least double the amount of the amount of the projected semi-monthly payroll. This law was enacted to provide wage protection to employees who work in these businesses. The failure rate in the Bar and Restaurant business is high, and employees sometimes find themselves without the wages which they have earned when the business goes broke. Our Union has always been in strong support of the wage protection act.

The problem we had with the act was that we felt it needed better enforcement. I would like to take this opportunity to commend the Commissioner of Labor and his staff for their successful efforts in improving enforcement. In January of 1981, only 132 businesses had posted the required bond. Right now, almost 400 businesses have posted the bond. That is a significant improvement.

The new bill amends that law so that anyone operating a bar, restaurant or tavern, must post the bond, but the Commissioner may waive the bond requirement after three years, just so long as the employer is in compliance with other provisions of the Fair Labor Standards Act. This amendment makes good sense to us. The three year period is a pretty good indication of whether or not the business is going to succeed, and whether or not the employer is making every effort to comply with the Fair Labor Standards Act. The Wage Protection Act was never intended to punish fair employers who were successful in their businesses. It was intended to protect the wages of some of the lowest paid employees in the state. This amendment puts all employers on an equal footing to post the bond, but also allows the waiver after three years for fair and successful employers.

This amendment was supported in a convention resolution by the State Convention of the Montana State Council of Hotel Employees and Restaurant Employees AFL CIO and subsequently by the Montana State AFL CIO Convention. It protects employees and it is fair to employers.

In closing, I urge your support for House Bill 384, to ensure wage Protection to employees who work in one of the lowest paid industries in the nation.

Thank you.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARYZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE --
ON HOUSE BILL 384 -- JANUARY 28, 1983

Mr. Chairman, members of the committee; my name is Don Judge and I'm here today representing the Montana State AFL-CIO. The Montana State AFL-CIO supports House Bill 384, which revises the Restaurant, Bar and Tavern Wage Protection Act to allow the Commissioner of Labor and Industry to waive the bonding requirement for these businesses after the first three years of operation. The bill also provides that the business must be in compliance with other provisions of the Fair Labor Standards Act, in order to qualify for the waiver.

Policies and positions of the Montana State AFL-CIO are set by elected delegates of the Montana State AFL-CIO Annual Conventions, by democratic process. In 1982, a resolution supporting this amendment to the Wage Protection Act was submitted by the State Convention of the Montana State Council of Hotel Employees and Restaurant Employees, AFL-CIO and the convention voted concurrence.

The resolution points out that there have been considerable enforcement problems with the amended Restaurant, Bar and Tavern Wage Protection Act. We believe this bill will make the act more enforceable and will provide an incentive to employers to comply with all provisions of the Fair Labor Standards Act in order to qualify for the bond waiver. The Act will still protect hotel and restaurant employees who work in low paying jobs, in an industry which experiences a high rate of business failures.

We would not support any measure which would weaken this essential wage protection, but since most failures occur in the first three years of business, and the bonding requirement for that period is now extended to all bar and restaurant employers, this is a reasonable revision of the act.

We ask you support of House Bill 384.

Thank you.

WITNESS STATEMENT

Name Robert F. Butterbusch Committee On Labor
Address 215 Wash St, Helena MS Date _____
Representing Self Support ☒
Bill No. HB 378 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Only a logical conclusion that Veterans Preference be continued for qualified veterans from being through retention.*

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Claudia Kuro ^{House} Committee On ^{LABOR &} EMPLOYMENT
Address 819 GILBERT Date 1/28/83
Representing HUSBAND Support _____
Bill No. ^{HB} 378 Oppose X
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- 1.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME Delia Hester BILL No. 378
ADDRESS Delens DATE 1-28-85
WHOM DO YOU REPRESENT Dept. of Revenue
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

See attached sheet.

WITNESS STATEMENT

NAME Mary Lisa Payne BILL No. HB 378
ADDRESS 23 S. Rodney, Helena DATE 1-28-83
WHOM DO YOU REPRESENT Self
SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

written testimony submitted

WITNESS STATEMENT

NAME DAN ANTONIETTI BILL No. H.B. 378
ADDRESS 5 WOOD COURT DATE 1-28-83
WHOM DO YOU REPRESENT U.S. Department of Labor - VES
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Appearing at request of Chief Sponsor
of the Bill and in my position of a
Federal Employee.

WITNESS STATEMENT

NAME Jan Gilman BILL No. HB 378

ADDRESS 36 S. Davis Helena DATE 1-28-82

WHOM DO YOU REPRESENT Interdepartmental Coordinating Committee for Women

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

Name Nadrian Jensen Committee On Labor
Address Helena, MT Date 1-28-83
Representing AFSCME, AFL-CIO Support X
Bill No. HB 378 Oppose _____
Amend ~~X~~

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Testimony submitted to committee

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name WES. KRAWCZYK
Address Helena
Representing A.C.L.U. of Mont
Bill No. _____

Committee On Home Labor
Date _____
Support _____
Oppose X HB 378
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WE OPPOSE HB 378. THIS BILL CREATES A SPECIAL CLASS OF VETERANS WHO ARE BASICALLY / + mostly white males
2. Thank you Mr. Chairman — members of the Committee
3. _____
4. _____

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME FRED EASY BILL No. HB 378
ADDRESS PO BOX 34 DATE Jan 28
WHOM DO YOU REPRESENT Self
SUPPORT OPPOSE AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

amend add the following

(4) Preference in appointments to
be made through establishment of a
uniform point scale. All veterans
to be awarded 10 points and
veterans in receipt of a disability
determination or purple heart to
be awarded an addition 10 points.

VISITOR'S REGISTER

HOUSE Labor Employment Relations COMMITTEEBILL HB 378DATE 1/28SPONSOR Bozup

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
<i>Myrnescott</i>	<i>Clancy</i>	<i>Self</i>		☒
<i>Cornie Flaherty Erickson</i>	<i>Helena</i>	<i>Self</i>		☒
<i>John Harper</i>	<i>Helena</i>	<i>Self</i>		☒
KYLE B. OLSON	GT. FALLS	CITY OF GT. FALLS		☒
<i>John Clark</i>	<i>Clancy</i>	<i>Self</i>		☒
<i>Kathy Apple</i>	<i>Helena</i>	<i>Self</i>		☒
<i>Don Phillips</i>	<i>Helena</i>	<i>Self</i>	☒	
<i>MRS. KRAWCZYK</i>	<i>Helena</i>	<i>A.C.L.U. of Mont</i>		☒
<i>Chene McKeith</i>	<i>Bozeman</i>	<i>Self</i>		☒
<i>Carol Annich</i>	<i>Billings</i>	<i>Self</i>		☒
<i>Eugene Timmer</i>	<i>Helena</i>	<i>Laborers 2254</i>		☒
<i>Frank Bottel</i>	<i>Helena</i>	<i>Self</i>	☒	
<i>Caro Herber</i>	<i>Helena</i>	<i>ICCW</i>		☒
<i>Gundy Anders</i>	<i>Helena</i>	<i>ICCW</i>		☒
<i>Janine Taylor</i>	<i>Helena</i>	<i>Personnel Div/DJFA</i>		☒
<i>Laurie Lamson</i>	<i>Helena</i>	<i>ICCW</i>		☒

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 378

DATE 1/28

SPONSOR BRAND

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Jan Gilman	Helena	ICCW		X
Lynnda Steele	Helena	self		X
Barbara Chaston	Helena	self		X
Bob Durkee	Helena	VFW	X	
Van Antonietti	Helena	USDL-VES	X	
Debi Hentley	Helena	Dept. of Revenue		X
Mary Ann Barrett	"	ICCW		X
Mike Hines	Helena	SELF	X	
Cynthia Lake	Helena	Women's Lobbyist Fund		
Carol Schuler	"	ICCW		X
Almy Cunningham	Helena	Commerce Dept.	X	
Harvey Cunningham	Helena		X	
FRED EASY	Helena	SELF	X	
Mary Lisa Payne	Helena	Self		✓
A. Nathan Jensen	Helena	AFSCME	X	
Claudia Rinn	Helena	Self		X
Steve Heberty	Helena	Women's Lobbyist Fund		
Jim Mep	Helena	Self		X
Robert Miller	East Helena	Self	X	
Hal BURT	Helena	Self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Kathy A. van Hook Committee On HB 384
Address 517 Waukegan Date 1/28/83
Representing Women's Lobbyist Fund Support ✓
Bill No. HB 384 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The Women's Lobbyist Fund Supports HB 384 because it is a bill that protects restaurant employees, the majority of whom are women.
- 2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 384

DATE 1/28

SPONSOR HAMMOND

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 390

DATE 1/28

SPONSOR ADDY

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
<i>Luis Loftstrom</i>	<i>701 No. DAVIS ^{city}</i>	<i>Pers. & Labor Rel. Co.</i>	<i>X</i>	
<i>Marie Cronin</i>	<i>Helena</i>	<i>I C C W</i>		<i>X</i>
<i>Jean Lusk</i>	<i>Helena</i>	<i>I C C W</i>		<i>X</i>
<i>Eileen Roberts</i>	<i>Helena</i>	<i>M. H. A.</i>	<i>X</i>	
<i>Walter Hunt</i>	<i>GT Fork</i>	<i>101-11</i>		
<i>Caro Serber</i>	<i>413 N Benton ^{Helena}</i>	<i>I C C W</i>		<i>X</i>
<i>Pat Harper</i>	<i>301 S. Gates, Helena</i>	<i>Serf</i>		<i>X</i>
<i>Lynne Scott</i>	<i>BS 147</i>			
<i>CHAD SMITH</i>	<i>HELENA</i>	<i>M H A</i>	<i>X</i>	
<i>Rose Skoog</i>	<i>Helena</i>	<i>"MT Health" Care Assoc</i>	<i>X</i>	
<i>Cathy Olson</i>	<i>Helena</i>	<i>mt. Nurse Assoc</i>	<i>X</i>	
<i>Donna Small</i>	<i>Billings</i>	<i>mt Nurse Assoc</i>	<i>X</i>	
<i>Sharon Riege</i>	<i>Dr. Teller</i>	<i>mt Nurse Assoc</i>		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

January 31, 19 83

MR. **SPEAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **384**

First reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT TO REQUIRE THE BONDING OF ALL RESTAURANTS, BARS, AND TAVERNS; ALLOWING THE COMMISSIONER OF LABOR AND INDUSTRY TO WAIVE THE BONDING REQUIREMENT; PROVIDING A GRANDFATHER CLAUSE; AMENDING SECTIONS 39-3-602 THROUGH 39-3-605, 39-3-607, AND 39-3-608, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **384**
be amended as follows:

1. Page 4, line 7.

Strike: "may"

Insert: "shall"

2. Page 4, lines 17 and 18.

Strike: "commissioner deems it necessary for the protection of the state of Montana or the employees of a"

3. Page 4, line 19.

Following: "tavern"

Insert: "defaults on the payment of wages, payroll taxes, or workers' compensation premiums"

AND AS AMENDED
DO PASS

XXXXXX
DO PASS

NEL WILLIAMS

Chairman.

STANDING COMMITTEE REPORT

January 28, 19 83

SPEAKER:

MR.

LABOR AND EMPLOYMENT RELATIONS

We, your committee on

having had under consideration HOUSE 399 Bill No.

First reading copy (white)

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE UNFAIR LABOR PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS; AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109, MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND 39-32-111, MCA."

Respectfully report as follows: That HOUSE 390 Bill No.

DO PASS

STATE PUB. CO.
Helena, Mont.

..... MEL WILLIAMS

Chairman.

COMMITTEE SECRETARY

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 15, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on March 15, 1983, at 1:00 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL NO. 455:

Chairman Aklestad introduced Representative Robert Dozier who presented House Bill No. 455 to the Committee in the absence of Representative Jerry Driscoll, the bill's sponsor.

House Bill No. 455 is an act to increase the age limit for purposes of the child services exclusion from the definition of employment in the unemployment compensation law.

Representative Dozier stated that the passage of this bill would put the state in compliance with the federal law.

PROPOSERS OF HOUSE BILL NO. 455:

Harold Kansier, representing the Department of Labor, stated that they support House Bill No. 455.

OPPOSERS OF HOUSE BILL NO. 455: None were present at the hearing.

There were no questions from the Committee.

If House Bill No. 455 passes Committee, Senator Lynch will carry the bill on the floor.

CONSIDERATION OF HOUSE BILL NO. 390:

Chairman Aklestad introduced Representative Addy, sponsor of House Bill No. 390, to the Committee, and Representative Addy presented the bill to the Committee.

House Bill No. 390 is an act to define unfair labor practices by health care facilities and labor organizations representing nurses; to establish procedures for adjudicating unfair labor practices charges; and to resolve appropriate unit and representation questions consistent with the public employees collective bargaining provisions.

Representative Addy stated that this bill is a product of the Personnel Study Commission.

PROPOSERS OF HOUSE BILL NO. 390:

Judy Olson, representing the Montana Nurses' Association, stated that they support House Bill No. 390 and agreed to the changes in the bill.

Joyce Brown, representing the Personnel and Labor Relations Study Commission, stated that they support House Bill 390. J. Brown's printed testimony is attached. (Exhibit No. 1)

Chad Smith, representing the Montana Hospital Association, stated that they would support House Bill 390 with the following amendment.

Page 6, line 16.

Strike: "at state or local levels"

OPPOSERS OF HOUSE BILL NO. 390: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 390:

Senator Lynch asked Representative Addy about language in the amendment submitted by Chad Smith.

Representative Addy stated that he had no fault with it.

Judy Olson stated that the language in the amendment was agreeable with the Montana Nurses' Association.

Senator Keating: Do any sections of the bill broaden rulemaking authority?

Representative Addy: No. This question came up in the House Committee and was answered in the negative.

Chairman Aklestad called the hearing on House Bill No. 390 closed.

CONSIDERATION OF HOUSE BILL NO. 384:

Chairman Aklestad introduced Representative Joe Hammond, sponsor of House Bill No. 384, to the Committee, and Representative Hammond presented the bill to the Committee.

House Bill No. 384 is an act revising the Restaurant, Bar, and Tavern Wage Protection Act to require the bonding of all restaurants, bars, and taverns; allowing the Commissioner of Labor and Industry to waive the bonding requirement; providing a grandfather clause.

PROPOSERS OF HOUSE BILL NO. 384:

David Hunter, Commissioner of Labor, stated that they are in support of House Bill No. 384, and Mr. Hunter further explained the bill to the Committee.

Mr. Hunter stated that they think this bill would give them better compliance.

Mr. Hunter further stated that the bill does the following:

- 1) Broadens the base of people who are covered.
- 2) Time is limited.
- 3) Requires bond for the first three years of operation.
- 4) Gives the Commissioner power to require bonds after three years for problem employers.

Mr. Hunter also thinks the bill gives workers better protection.

Mr. Hunter stated that it allows the Department to target staff time and efforts to those restaurants and taverns that may require bonds.

Seymour Flanagan, representing Hotel and Restaurant Employees' International Union, stated they support House Bill 384 because it protects the employees. Mr. Flanagan's printed testimony is attached. (Exhibit No. 2)

Martin Quick, representing Local 101, stated they support House Bill 384.

Margaret Flanagan, representing the Hotel and Restaurant Employees' and Bartenders' Local #533, stated that they support House Bill 384.

Stacy Flaherty, representing the Women's Lobbyist Fund, stated that they support House Bill 384.

Jim Murry, representing Montana State AFL-CIO, stated that they support House Bill 384. Mr. Murry's printed testimony is attached. (Exhibit No. 3)

Dick Kane, representing the Labor Standards Division, stated that they support House Bill 384.

OPPONENTS OF HOUSE BILL NO. 384: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 384:

Senator Blaylock: Do they ever collect on the bonds?

Dave Hunter: Yes, they do. They have had good success in collecting on the bonds.

This bill grandfathers everyone who has been in operation for three years. They would not have to have a bond.

Senator Goodover asked Phil Strobe about the taverns.

Mr. Strobe stated that they support the concept of the bill. They feel the three-year requirement is fairly reasonable.

Senator Keating asked Dave Hunter about tavern businesses that changed hands.

Mr. Hunter stated that the new owner would have to have a bond.

Chairman Aklestad: The law presently covers only lessees?

Dave Hunter: Yes. They have to carry the bond forever.

Senator Dave Fuller will carry House Bill 384 on the floor if the bill passes Committee.

Chairman Aklestad called the hearing closed on House Bill No. 384.

ACTION ON HOUSE BILL NO. 300:

No action was taken at this meeting. Chairman Aklestad wants to look into additional information on the bill.

ACTION ON HOUSE BILL NO. 301:

Senator Lynch moved that House Bill No. 301 Be Concurred In.

On a Roll Call Vote the Committee voted unanimously that HOUSE BILL NO. 301 BE CONCURRED IN. The Roll Call Vote is attached.

Senator Manning will carry House Bill No. 301 on the floor.

ACTION ON HOUSE BILL NO. 525:

Senator Keating moved that the proposed amendments be adopted. On a voice vote, the Committee voted 5-3 to adopt the amendments to House Bill No. 525. Senators Manning, Lynch, and Blaylock voted "no".

Senator Keating moved that House Bill No. 525 Be Concurred In as Amended.

On a Roll Call Vote, the Committee voted 7-1 that HOUSE BILL NO. 525 BE CONCURRED IN AS AMENDED. The Roll Call Vote is attached.

ACTION ON HOUSE BILL NO. 302:

Senator Lynch moved that House Bill No. 302 Be Concurred In with the understanding that "employees" would be changed to "employers" on page 1, line 20 as a clerical amendment.

Labor & Employment Relations

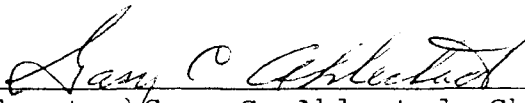
March 15, 1983

Page 5

On a voice vote, the Committee voted 7-1 that HOUSE BILL NO. 302
BE CONCURRED IN. Senator Keating voted "no".

Senator Gage will carry House Bill No. 302 on the floor.

ADJOURN: There being no further business before the Committee,
the meeting was adjourned at 2:30 p.m.



Senator Gary C. Aklestad, Chairman

mln

STANDING COMMITTEE REPORT

March 15,

19 83

MR. PRESIDENT:

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 301

Harper (Manning)

Respectfully report as follows: That HOUSE Bill No. 301

BE CONCURRED IN

~~XXXXX~~

STANDING COMMITTEE REPORT

March 15, 1983

MR. PRESIDENT:

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 302

Harper (Gage)

Respectfully report as follows: That HOUSE Bill No. 302

BE CONCURRED IN
~~XXXXXX~~

STANDING COMMITTEE REPORT

March 15, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **525**

Darko (Christiaens)

Respectfully report as follows: That **HOUSE** Bill No. **525**
third reading, be amended as follows:

1. Page 1, line 19.
Following: "or"
Strike: "a bona fide"
2. Page 1, line 20.
Following: "if the"
Insert: "agreement,"
3. Page 1, line 22.
Following: "However, no"
Insert: "collective bargaining agreement,"

DOXKAS

(Continued)

4. Page 1, line 24.

Following: "age"

Strike: "."

Insert: ", unless the employee has either attained 70 years of age, or has attained 65 years of age and has for the 2 year period immediately prior to retirement been employed in an executive or high policy making position and is entitled to an immediate and nonforfeitable annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan of an employer, or any combination of such benefits, of at least \$27,000 a year."

And, as so amended
BE CONCURRED IN

HC

SENATE COMMITTEE LABOR

Date 3/15/83 House Bill No. 301 Time 1:55

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH	✓	
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN	✓	

Marjorie Nichols
Secretary

Gary C. Aklestad
Chairman *mn*

Motion: Senator Lynch moved that House Bill # 301
Be Concurred In.

(Senator Manning will carry on the floor)

Motion carried by unanimous vote.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR

Date 3/15/83 House Bill No. 525 Time 2:25

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH	✓	
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN		✓

Marjorie Nichols
Secretary

Gary C. Aklestad
Chairman *mn*

Motion: Senator Keating moved that House Bill
No. 525 Be Concurred in as amended.

Motion carried 7-1. (Sen. Christensen will carry on floor.)

(include enough information on motion--put with yellow copy of committee report.)

TESTIMONY ON HB 390 by Joyce Brown,
Project Director of the Personnel and
Labor Relations Study Commission
before the Senate Labor Committee, 3-15-83

Mr. Chairman, members of the Committee. HB390 is another Personnel and Labor Relations Study Commission bill which has received unanimous support by all affected parties including the Hospital Association and Nurses Association.

HB390 amends the Collective Bargaining for Nurses Act (CBNA) to make the language and procedures established by that act more consistent with the language and procedures of the other major collective bargaining statute - the Collective Bargaining for Public Employees Act (CBPEA).

The Collective Bargaining for Nurses Act serves the same purpose as the Collective Bargaining for Public Employees Act -- to establish statutory collective bargaining -- but since it predated the CBPEA it contains inconsistent provisions or lacks provisions of the more comprehensive CBPEA. These inconsistencies create unnecessary confusion, especially with respect to public sector LPN's who appear to be covered by both acts.

HB390 corrects many of the inconsistencies by providing that unfair labor practice proceedings and representation questions involving nurses under the CBNA will be handled by the Board of Personnel Appeals (BPA) in the same manner as for other public employees under the CBPEA. Since the BPA had not yet been formed when the CBNA was enacted administrative responsibility was given to the Department of Labor and Industry rather than to the BPA. The Department of Labor and Industry has since delegated that responsibility to the attached BPA. HB390 places administrative responsibility with the BPA reflecting current practice and gives it the authority needed to carry out that function.

HB390 also adds to the CBNA the list of prohibited practices (unfair labor practices) by labor organizations which are in the CBPEA. The CBNA currently specifies only unfair labor practices for employers and none for collective bargaining organizations.

The Study Commission feels that these changes made by HB390 will correct most of the inconsistencies between the two major collective bargaining statutes and contribute to a more efficient administrative process.

TESTIMONY OF: SEYMOUR J. FLANAGAN ON HOUSE BILL 384, BEFORE THE SENATE LABOR
AND EMPLOYMENT RELATIONS COMMITTEE.
MARCH 15, 1983

I am Seymour J. Flanagan, International Organizer for the Hotel Employees and Restaurant Employees International Union AFL CIO . I am here to testify in support of House Bill 384, a bill which amends the current restaurant, bar and tavern wage protective act.

The current law requires that anyone not owning the building in which he operates a bar, restaurant or tavern must post a bond with the Commissioner of Labor and Industry equal to at least double the amount of the amount of the projected semi-monthly payroll. This law was enacted to provide wage protection to employees who work in these businesses. The failure rate in the Bar and Restaurant business is high, and employees sometimes find themselves without the wages which they have earned when the business goes broke. Our Union has always been in strong support of the wage protection act.

The problem we had with the act was that we felt it needed better enforcement. I would like to take this opportunity to commend the Commissioner of Labor and his staff for their successful efforts in improving enforcement. In January of 1981, only 132 businesses had posted the required bond. Right now, almost 400 businesses have posted the bond. That is a significant improvement.

The new bill amends that law so that anyone operating a bar, restaurant or tavern, must post the bond, but the Commissioner may waive the bond requirement after three years, just so long as the employer is in compliance with other provisions of the Fair Labor Standards Act. This amendment makes good sense to us. The three year period is a pretty good indication of whether or not the business is going to succeed, and whether or not the employer is making every effort to comply with the Fair Labor Standards Act. The Wage Protection Act was never intended to punish fair employers who were successful in their businesses. It was intended to protect the wages of some of the lowest paid employees in the state. This amendment puts all employers on an equal footing to post the bond, but also allows the waiver after three years for fair and successful employers.

This amendment was supported in a convention resolution by the State Convention of the Montana State Council of Hotel Employees and Restaurant Employees AFL CIO and subsequently by the Montana State AFL CIO Convention. It protects employees and it is fair to employers.

In closing, I urge your support for House Bill 384, to ensure wage Protection to employees who work in one of the lowest paid industries in the nation.

Thank you.



Exhibit No. 3
Submitted by Jim Murry
March 15, 1983

JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS
COMMITTEE ON HOUSE BILL 384, MARCH 15, 1983

Mr. Chairman, members of the committee; my name is Jim Murry and I'm here today representing the Montana State AFL-CIO. The Montana State AFL-CIO supports House Bill 384, which revises the Restaurant, Bar and Tavern Wage Protection Act to allow the Commissioner of Labor and Industry to waive the bonding requirement for these businesses after the first three years of operation. The bill also provides that the business must be in compliance with other provisions of the Fair Labor Standards Act, in order to qualify for the waiver.

Policies and positions of the Montana State AFL-CIO are set by elected delegates of the Montana State AFL-CIO Annual Convention, by democratic process. In 1982, a resolution supporting this amendment to the Wage Protection Act was submitted by the State Convention of the Montana State Council of Hotel Employees and Restaurant Employees, AFL-CIO, and the convention voted concurrence.

The resolution points out that there have been considerable enforcement problems with the amended Restaurant, Bar and Tavern Wage Protection Act. We believe this bill will make the act more enforceable and will provide an incentive to employers to comply with all provisions of the Fair Labor Standards Act in order to qualify for the bond waiver. The Act will still protect hotel and restaurant employees who work in low-paying jobs, in an industry which experiences a high rate of business failure.

We would not support any measure which would weaken this essential wage protection, but since most failures occur in the first three years of business, and the bonding requirement for that period is now extended to all bar and restaurant employers, this is a reasonable revision of the Act.

We ask your support of House Bill 384.

Thank you.

(This sheet to be used by those testifying on a bill.)

NAME: Harold V Kansier DATE: 3/15/83

ADDRESS: Helena

PHONE: # 49-2723

REPRESENTING WHOM? Dept of Labor

APPEARING ON WHICH PROPOSAL: # 455

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Ray Brown DATE: 3-15-83

ADDRESS: Mitchell Building

PHONE: 449-3811

REPRESENTING WHOM? Personal & Labor Rel. Study Comm

APPEARING ON WHICH PROPOSAL: H.B. 390

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: CNAD SMITH DATE: 3-15-83

ADDRESS: Box 604

PHONE: 442-2980

REPRESENTING WHOM? Mount Hospital Ass'n

APPEARING ON WHICH PROPOSAL: HB 390

DO YOU: SUPPORT? as amended AMEND? _____ OPPOSE? _____

COMMENTS: _____

amend on page 6 line 16 by deleting the words "at
state or local levels."

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: David Hunter DATE: 3/15/83

ADDRESS: Capital Station Helena

PHONE: 445-3661

REPRESENTING WHOM? Dept of Labor

APPEARING ON WHICH PROPOSAL: HB 384

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Samuel Hancan DATE: 3.15.83

ADDRESS: 1616 Cannon Apt 22, Helena, MT.

PHONE: 442-3727

REPRESENTING WHOM? NE+RC Int Union

APPEARING ON WHICH PROPOSAL: 384

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: I support this because it
protects the employees in the
Hotel Rest + Bar Establishments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Martin R. Ruick DATE: 3-15-83

ADDRESS: 222 24th St S.W., Prescott Falls,

PHONE: 452-1965

REPRESENTING WHOM? LOCAL 101

APPEARING ON WHICH PROPOSAL: 384

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: We at the local feel it is important
to have the protection for our people
in the Trade.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Margaret Flanagan DATE: 3-15-83

ADDRESS: 1616 Cannon apt 22

PHONE: 442-3727

REPRESENTING WHOM? Hotel & Restaurant Emp. & Bartender Local 533

APPEARING ON WHICH PROPOSAL: House Bill 384

DO YOU: SUPPORT? yes AMEND? _____ OPPOSE? _____

COMMENTS: I feel this bill is needed in
our Industry

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Stacy Flaherty DATE: 3-15-83

ADDRESS: P.O. Box 1099

PHONE: 449-7917

REPRESENTING WHOM? Women's Lobbyist Fund

APPEARING ON WHICH PROPOSAL: HB 384

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: The Women's Lobbyist Fund
supports HB 384

This bill particularly affects
women who make up over half of the
restaurant's servers. They are most
often employed in establishments
affected by restaurant bonding.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Jin. Mary DATE: 3/15/83

ADDRESS: P.O. Box 1176 Helena, Mont.

PHONE: 442-1708

REPRESENTING WHOM? Mont. AFL-CIO

APPEARING ON WHICH PROPOSAL: 1413 384

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Dick Kane DATE: 3/15

ADDRESS: Helena

PHONE: 449-5600

REPRESENTING WHOM? Labor Standards Div

APPEARING ON WHICH PROPOSAL: HB-384

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 19, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on March 19, 1983, at 12:30 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL NO. 603:

Chairman Aklestad introduced Representative Ray Peck, sponsor of House Bill No. 603, to the Committee, and Representative Peck presented the bill to the Committee.

House Bill No. 603 is an act to allow the number of hours worked by firefighters to be the subject of collective bargaining.

Representative Peck stated that this bill allows for flexible hours as per agreement with the employer.

PROPONENTS OF HOUSE BILL NO. 603:

Essie Gebhardt, representing the Havre City Council, stated that they support House Bill 603. She submitted a letter to the Committee from Raymond Watson, the Mayor of Havre, stating that they, too, support House Bill 603. Mr. Watson's letter is attached. (Exhibit No. 1)

Timothy D. McKay, representing the Havre Fire Department, stated that they support House Bill 603. Mr. McKay submitted a letter to the Committee from Norman Maze, Chief of Havre Fire Department, in support of House Bill 603. This letter is attached. (Exhibit No. 2)

Kyle Olson, representing the city of Great Falls, stated that they support House Bill 603. Mr. Olson stated that this bill is supported by both management and labor, and it encourages efficiency in fire departments in the state of Montana as well as benefiting the taxpayers in the state.

Mike Walker, representing the Montana State Council of Professional Fire Fighters, stated that they support House Bill 603. They would like the flexibility.

OPPONENTS OF HOUSE BILL NO. 603: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 603:

Senator Goodover asked Kyle Olson if the fire fighters in Great Falls had been working 8 hours a day.

Kyle Olson responded that this bill would give them the ability to legitimize what they are doing.

Senator Lynch asked Representative Peck if this bill does the same thing that Dozier's bill does?

Representative Peck stated, "Yes, essentially it does". He further stated that there are cities in the state that were not complying with the law and this bill would allow them to be in compliance.

Senator Goodover asked why this bill couldn't have been included with the other bill.

Representative Peck stated that it probably could have been included with the other bill, but there are some points relating to firefighters that don't relate to the other bills.

CONSIDERATION OF HOUSE BILL NO. 749:

Chairman Aklestad introduced Representative Andrea Hemstad, sponsor of House Bill No. 749, to the Committee, and Representative Hemstad presented the bill to the Committee.

House Bill No. 749 is an act providing for job sharing in state personnel positions; defining "Job Sharing"; encouraging the use of job sharing to increase productivity and employment opportunities; and requiring a report on implementation of job sharing to the 49th legislature.

PROPOSERS OF HOUSE BILL NO. 749:

Celinda Lake, representing the Women's Lobbyist Fund, stated that they support House Bill No. 749. C. Lake's printed testimony is attached. (Exhibit No. 3)

Tom Schneider, representing MPEA, stated that they support House Bill 749. They feel job sharing increases productivity and that it is advantageous for the employer to do this and there is no additional cost to the employer.

Jan Gilman, representing ICCW, stated that they support House Bill 749. J. Gilman's printed testimony is attached. (Exhibit No. 4)

OPPONENTS OF HOUSE BILL NO. 749: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 749:

Senator Keating: What benefits are shared?

Representative Hemstad: If you are a part-time employee already, pay and vacation pay as well as sick leave are pro-rated. Under the bill there is one FTE position and those sharing it share all benefits.

Senator Keating: Does the sharing party get half the benefits or do they pay something and get full coverage?

Tom Schneider: It would be pro-rated according to the hours they are working.

Senator Keating: How about unemployment compensation?

Dave Hunter: Each individual is eligible for benefits based on their wages and the time they have worked. There is a minimum benefit amount and a maximum benefit amount.

Senator Goodover: How would you job share?

Representative Hemstad: There would have to be an arrangement between the persons involved and the employees.

Senator Goodover: I don't understand how you could get better productivity when perhaps some jobs would be unfinished when one person leaves for the day and the next person takes over.

Senator Keating: How many jobs would be utilized by job sharing?

Representative Hemstad: I have no idea. There are 3 or 4 people in SRS who are job sharing.

Senator Keating: Why do we need the bill if they are doing this already?

Representative Hemstad: It would be a more positive approach from employers to encourage the practice of job sharing.

Chairman Aklestad: There is nothing on the statutes now that would not allow the employees to do this.

Representative Hemstad: They should also be sharing in the benefits, and that should be put in the statutes.

Chairman Aklestad: How much additional bookkeeping would there be?

Representative Hemstad: No greater than now. They have part-time people they are already pro-rating.

Senator Lynch: In regard to something like health insurance, could they stay in a plan?

Representative Hemstad: Yes, they could.

Senator Keating: Are these job sharing people required to belong to a union?

Tom Schneider: If there is a union where they are employed, they must belong to it.

Representative Hemstad stated in closing that she feels that job sharing would increase productivity. It would be good for working mothers as well as professional people, and it would not take more money to administer. Job sharing would be helpful to state employees who could not or do not want to work full time.

Chairman Aklestad called the hearing closed on House Bill 749.

CONSIDERATION OF HOUSE BILL NO. 795:

Chairman Aklestad asked Representative Robert Ellerd, sponsor of House Bill No. 795, to present the bill to the Committee.

House Bill No. 795 is an act to limit the use of money accrued to the Unemployment Insurance Trust Fund from interest and penalties on past-due contributions.

PROPOSERS OF HOUSE BILL NO. 795:

Representative Norman Wallin, representing himself, gave a history of why the bill was introduced. He stated that the purpose of the bill is to tighten up control of the money.

Chad Smith, representing the Unemployment Compensation Advisors, Inc., stated that they strongly support House Bill 795. The bill clears up a conflict between two statutes as to what account the penalties and interest go into.

Dave Goss, representing the Billings Chamber of Commerce, stated that they support House Bill 795.

Dave Hunter, the Commissioner of Labor and Industry, stated that they support House Bill 795. Mr. Hunter stated that the penalty and interest fund has usually been used to pay for benefits. He further stated that it does reduce somewhat the flexibility of the Department to take care of emergency situations.

Mr. Hunter stated that this penalty and interest money goes to the Trust Fund and makes sure that employees get the interest benefits.

OPPONENTS OF HOUSE BILL NO. 795: None present at the hearing.

There were no questions from the Committee on House Bill 795.

Representative Ellerd made closing remarks in support of House Bill 795.

Chairman Aklestad called the hearing closed on House Bill 795.

ACTION ON HOUSE BILL NO. 795:

Senator Goodover moved that House Bill No. 795 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 795 BE CONCURRED IN.

Senator Gage will carry House Bill 795 on the floor.

ACTION ON HOUSE BILL NO. 749:

Senator Manning moved that House Bill No. 749 Be Concurred In.

There was further discussion by the Committee, and Senator Keating stated that this should be looked at very carefully.

Senator Goodover questioned the possibility that if an employee has a health problem could he be forced to job share?

Senator Lynch stated that he didn't think so.

Senator Keating stated that he would like to pass consideration on House Bill No. 749 for purposes of preparing some amendments.

The Committee agreed to take no action on House Bill No. 749 today.

ACTION ON HOUSE BILL NO. 603:

Senator Galt moved that House Bill No. 603 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 603 BE CONCURRED IN.

Senator Lynch will carry House Bill No. 603 on the floor.

ACTION ON HOUSE BILL NO. 384:

Senator Blaylock moved that House Bill No. 384 Be Concurred In. On a voice vote, the Committee voted 7-1 that HOUSE BILL NO. 384 BE CONCURRED IN. Senator Gage voted "no".

Senator Fuller will carry House Bill No. 384 on the floor.

ACTION ON HOUSE BILL NO. 390:

Senator Keating offered the following amendment to House Bill No. 390.

1. Page 6, line 16.
Following: "parties"
Strike: "at state or local levels"

On a voice vote, the Committee voted unanimously to adopt Senator Keating's proposed amendment to House Bill No. 390.

Senator Keating moved that House Bill No. 390 Be Concurred In as Amended. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 390 BE CONCURRED IN AS AMENDED.

Senator Manning will carry House Bill No. 390 on the floor.

ACTION ON HOUSE BILL NO. 455:

Senator Lynch moved that House Bill No. 455 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 455 BE CONCURRED IN.

Senator Lynch will carry House Bill No. 455 on the floor.

ACTION ON HOUSE BILL NO. 281:

Senator Manning moved that House Bill No. 281 Be Concurred In.

Senator Goodover submitted the following amendment:

- Page 9, line 10.
Following: "no"
Strike: "bargaining unit is recognized"
Insert: "collective bargaining agreement
exists or is in the process of being negotiated"

Also, on page 7, the same amendment as above should be inserted.

Senator Goodover moved the above amendments Do Pass. The Committee voted unanimously to adopt the above amendments. Senator Manning proposed the amendment offered by Rose Skoog.

Senator Goodover stated that the Committee should run the amendments by Mae Nan Ellingson and Chad Smith so they would know what was being amended in the bill.

Senator Goodover moved that the Committee pass consideration on House Bill 281 for today. The Committee agreed so no action was taken on House Bill 281 today.

ACTION ON HOUSE BILL NO. 309:

Senator Lynch moved that House Bill 309 Be Not Concurred In. A Roll Call Vote was taken on Senator Lynch's motion.

On the Roll Call Vote, the motion failed 6-2. The Roll Call Vote is attached.

Chairman Aklestad asked Dave Hunter whether there was any fiscal impact on the bill.

Dave Hunter stated that there was a fiscal note attached to the bill, and one amendment would delete page 4, lines 13 and 14, which reads as follows:

"(2) The court may grant costs and attorney's fees to the prevailing party."

Dave Hunter stated that the above amendment would lessen the fiscal impact.

Dave Hunter further stated that the remainder of the fiscal impact involves a hearing officer position in the Personnel Appeals Division tentatively approved by the Human Services Appropriation Subcommittee pending the passage of House Bill 309.

The Committee discussed Representative Bardanouve's amendments which were distributed to the Committee on March 17, 1983. These amendments are attached. (Exhibit No. 5)

Senator Keating asked Bob Jensen from the Department of Labor if any additional funding would be necessary.

Mr. Jensen stated that no additional monies would be necessary to administer this law.

Senator Goodover moved that Representative Bardanouve's amendments Be Concurred In. On a voice vote, the Committee voted unanimously to adopt Representative Bardanouve's amendments.

The staff attorney said there are clerical errors--page 2, line 22, the first two words should be deleted and "a" should be inserted on page 2, line 15 after "also be". This was cleared with Joyce Brown by the staff attorney.

Senator Blaylock moved the previous language be adopted. The Committee voted unanimously by voice vote to adopt the language proposed by Staff Attorney, John MacMaster.

Senator Lynch inquired why the judicial and legislative employees couldn't be included as well.

Senator Lynch moved that the Committee include judicial and legislative employees in the bill.

Dennis Taylor stated that other changes would also have to be made.

Staff Attorney, John McMaster, will work on the amendments for Senator Lynch.

Senator Lynch withdrew his amendments.

The Committee agreed to pass consideration on House Bill 309 at this meeting.

ACTION ON HOUSE BILL NO. 300:

Chairman Aklestad stated that in House Bill No. 300 the gist of the bill is that after June 30, 1983, the minimum wage goes to at least \$3.05 an hour, and at least \$3.35 an hour after January 1, 1984.

Senator Keating stated that when a business triggers into an amount of \$362,500, they go into the federal minimum wage.

Senator Lynch stated that you deduct 8% of your gross and divide that amount among the employees and add it to their wages for purposes of withholding for federal income tax purposes.

Senator Keating asked when tips were included in the federal minimum wage.

Senator Lynch stated that actual tips received can be deducted from the minimum wage paid, up to 40% of the minimum wage, under federal minimum wage law.

Chairman Aklestad brought up the Kelly Halvorson testimony on House Bill 300 which she gave at the hearing on March 12, 1983. The Committee had received a letter from Kelly Halvorson stating that some of the testimony she gave on that date was erroneous.

Chairman Aklestad wanted to get the consensus of opinion from the Committee and decide if the testimony should be stricken from the record.

Senator Blaylock stated that when K. Halvorson testified she was not a professional witness, and it was unfortunate that she would make that mistake, but he thought it was an honest error.

Senator Keating stated that he thought K. Halvorson's letter was a retraction.

Senator Manning stated that he felt she had made a mistake and was trying to resolve her mistake by submitting the actual facts.

Chairman Aklestad stated that he felt it is important that people who testify before a Senate Committee be certain that their facts and figures are correct.

Senator Goodover stated that she was recruited from a lobby group, and they should take the responsibility to check pertinent testimony beforehand.

Chairman Aklestad made a motion that the testimony by Kelly Halvorson on House Bill No. 300 be stricken from the record.

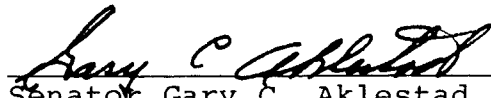
On a Roll Call Vote, the Committee voted 5-3 that the testimony presented by Kelly Halvorson on House Bill 300 on March 12, 1983, be stricken from the record.

Senator Keating stated that last session he was opposed to the measure about minimum wage. He feels that if workers are worth more, they will be paid more.

Senator Keating moved that House Bill 300 Be Not Concurred In.

On a Roll Call Vote, the Committee voted 6-2 that HOUSE BILL NO. 300 BE NOT CONCURRED IN. The Roll Call Vote is attached.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:35 p.m.



Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/19/80

[illegible]

STANDING COMMITTEE REPORT

March 19, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **300**

Farris (Aklestad)

Respectfully report as follows: That **HOUSE** Bill No. **300**

BE NOT CONCURRED IN
HOUSE

STANDING COMMITTEE REPORT

March 19, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **384**

Hammond (Fuller)

Respectfully report as follows: That **HOUSE** Bill No. **384**

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 19, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **390**

Addy (Manning)

Respectfully report as follows: That **HOUSE** Bill No. **390**
third reading, be amended as follows:

1. Page 6, line 16.
Following: "parties"
Strike: "at state or local levels"

And, as so amended
BE CONCURRED IN
DOUGLAS

STANDING COMMITTEE REPORT

March 19, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **455**

Driscoll (Lynch)

Respectfully report as follows: That **HOUSE** Bill No. **455**

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

..... March 19, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **603**

Peck (Lynch)

Respectfully report as follows: That **HOUSE** Bill No. **603**

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 19, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **795**

Ellerd (Gage)

Respectfully report as follows: That **HOUSE** Bill No. **795**

BE CONCURRED IN
MARK

SENATE COMMITTEE LABOR

Date 3/19/83 House Bill No. 309 Time 1.45

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN		✓
JACK GALT		✓
PAT GOODOVER		✓
DELWYN GAGE		✓
CHET BLAYLOCK		✓
JOHN LYNCH	✓	
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN		✓

Margie Nichols
Secretary

Gary C. Aklestad
Chairman *mu*

Motion: Senator Lynch moved that House Bill 309
Be Not Concurred in.

Motion failed 6-2.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR

Date 3/19/83 Home Bill No. 300 Time 2:15

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK		✓
JOHN LYNCH		✓
DICK MANNING		✓
GARY AKLESTAD, CHAIRMAN	✓	

Margie Nichols
Secretary

Gary C. Aklestad
Chairman *mn*

Motion: Senator Aklestad moved that the testimony by
Kelly Halvorsen at the hearing on House Bill 300 on 3/12/83
be stricken from the record since K. Halvorsen wrote a letter to
the Committee stating that part of her testimony was erroneous.
Passed 5-3.
(include enough information on motion--put with yellow copy of
committee report.)

SENATE COMMITTEE LABOR

Date 3/19/83 House Bill No. 300 Time 2:30

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK		✓
JOHN LYNCH		✓
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN	✓	

Margie Nichols
Secretary

Gary C. Aklestad
Chairman *mm*

Motion: Senator Keating moved that House Bill 300
Be Not Concurred In.

Motion Carried 6-2.

(include enough information on motion--put with yellow copy of committee report.)

March 19, 1983

LABOR & EMPLOYMENT RELATIONS

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Basie Gehhardt	Haare City Council	602	✓	
Timothy D. Clark	Haare Fire Dept.	603	✓	
Mike Walker	Mt. State Council of Pro Fire Fighters	603	✓	
Tom Schauder	MPEA	749	✓	
Harry Wenberg	Mont N Sys	749	—	—
Jan Gilman	ICUW	749	✓	
Tommy Gross	Billings Chamber of Commerce	795	X	
Chap Smith	Army Corps of Engineers, Inc	795	X	

(Please leave prepared statement with Cooperator)

CITY OF HAVRE

P.O. Box 231
HAVRE, MONTANA 59501

March 18, 1983

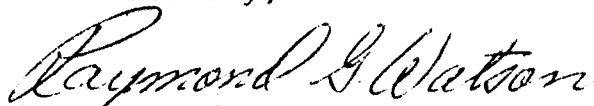
EXHIBIT 1
submitted by
Mayor Raymond
Watson
3/19/83

The Honorable Gary Aklestad Chairman
Senate Labor Committee
Room 404
State Capitol

Dear Honorable Chairman,

This short note will confirm the City of Havre administration's support for the passage of HB603 amending the firefighters hours of work. We of the City of Havre have no objection to this bill and do feel in the spirit of local control, that a favorable Committee report is in the best interests of the City and the firefighters.

Sincerely,



Raymond G. Watson
Mayor City of Havre

RGW:mo

3/19/83

EXHIBIT 2

Submitted by Norman

Maze

FIRE DEPARTMENT *City of* HAVRE, MONTANA

FIFTH AVENUE & FOURTH STREET

TELEPHONES:

FIRE CALLS ONLY	265-2223
AMBULANCE CALLS ONLY	265-2223
BUSINESS CALLS	265-6511

March 18, 1983

The Honorable Gary Aklestad Chairman
Senate Labor Committee
Room 404
State Capitol

Honorable Chairman,

In the last 22 years I have worked the ranks of Havre's Fire Department and for the last 4 years held the position as Chief of this department. In these past 26 years I have experienced various types of work schedules and it is my contention that to obtain the utmost in efficiency and the best return on the tax payers dollar, that FireFighters be allowed the opportunity of flexible work schedules. Therefore I would recommend to this committee a due pass vote on House Bill 603.

Respectfully,

Norman Maze
Norman Maze Chief

Havre Fire Department

NM/tnm

"Don't Give Fire a Place to Start - Learn not to Burn"

WOMEN'S LOBBYIST FUND

EXHIBIT 3

Submitted by Celinda

Lake

3/19/83

TESTIMONY FOR THE WOMEN'S LOBBYIST FUND, CELINDA C. LAKE, BEFORE SENATE LABOR AND EMPLOYMENT COMMITTEE MARCH 19, 1983

In this year's legislative agenda the Women's Lobbyist Fund has concentrated on issues of equity and economic opportunity for women. We are particularly concerned that Montana's state policies and state employment recognize the changing reality of women in the workforce. Job sharing is an important step in recognizing changing sex roles and family life styles. It gives women and men with young family responsibilities the opportunity to participate in the work force and still meet their family demands. That is an economic necessity for most families today and desirable for our society as a whole. This legislature will probably adopt a policy allowing four day school weeks. We need to adopt and encourage other policies to allow families the flexibility to work around such an arrangement for their children. Coupled with policies like parental leave, job sharing can increase the involvement of both parents with their children and reduce day care costs for families.

Job sharing is good for the employee and the employer. It allows employees even with heavy family responsibilities the time to acquire additional job training and job skills. This is particularly important for women who may have nontraditional career paths. Studies by a variety of institutions, including the National Council for Alternative Work Patterns in Washington, D.C. and the Institute for Work in America in New York, have shown that productivity and creativity rise and absenteeism falls under job sharing plans. There is also less disruption and cost if one worker has to suddenly leave because of illness or family emergency.

Job sharing makes it easier for workers who suffer from some medical condition to maintain their jobs without destroying their health. Without job sharing employees in all types of situations are forced into a false choice of working at tremendous personal cost to themselves and/or their families or leaving work. The result of this choice is undesirable for employers, employees, the families of employees, and society as a whole.

We would urge this committee to pass HB 749 which would direct state government to permit job sharing at the option of the employee. Thank you.

My name is Jan Gilman and I represent the Interdepartmental Coordinating Committee for Women (ICCW). The ICCW supports HB 749. Job sharing is a benefit both for employees and the agencies for which they work. Employees not able to work 40 hours a week due to health constraints, family responsibilities or other concerns often are able to work productively in a job sharing situation. Job sharing allows people to work while leaving time for other commitments, and allows handicapped or older workers or those recovering from previous illnesses such as heart attacks to remain productive employees while not overly taxing their health. At the same time the state receives a full day's work from the position.

Job sharing will increase productivity and morale in state government. Absenteeism would be reduced as positions would be covered during vacations and illnesses. Job sharing will also provide greater continuity in employment when an individual resigns; transitions would be accomplished with less interruption to the work flow. It provides increased employment opportunities by offering jobs to those who might not otherwise be able to work full-time. Expertise from more than one individual is combined through job sharing.

State government must recognize the need for more flexibility in work situations. The ICCW strongly supports HB 749.

Amendments to HB 309, Third Reading Copy, offered by the sponsor,
Representative Francis Bardanouve

1. Page 2, line 4.
Following: "hours,"
Insert: "or"

2. Page 2, line 5.
Following: "involuntarily"
Strike: "or reprimanded in writing,"

3. Page 2, lines 18 through 22.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

4. Page 3, line 10.
Following: "employee"
Strike: "is" through "aggrieved" on line 11
Insert: "was terminated, demoted, suspended, or laid off for
more than 40 working hours or transferred to another
geographical location involuntarily and that the action was
taken without just cause, in violation of law, in retaliation
for filing or attempting to file a grievance appeal or in
violation of state or agency rules or written policies which
resulted in substantial prejudice to the rights of the
employee"

5. Page 3, line 21.
Following: "fees."
Strike: "(1)"

6. Page 4, lines 13 and 14.
Strike: subsection (2) in its entirety.

(This sheet to be used by those testifying on a bill.)

NAME: Essie Helhardt DATE: _____

ADDRESS: 1227 Lincoln Ave. - Harre, Mt. 59501

PHONE: 265-6525

REPRESENTING WHOM? City Council - Harre, Mt.

APPEARING ON WHICH PROPOSAL: 603

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: I recommend passage - Harre firefighters
have been on the 8 hr. shift for the past two yrs.
We find they have less time to conduct building
inspections less time for fire service ~~for~~ training
and E. M. I. training.

It is my opinion as Police & Labor
Committee Chairman of Harre City Council that
House Bill 603 receive a due pass vote.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Cyle B. Olson DATE: 3/19/83

ADDRESS: 919 1st Ave SW, Great Falls

PHONE: H) 453-9310 W) 727-5881 x399

REPRESENTING WHOM? CITY OF GREAT FALLS

APPEARING ON WHICH PROPOSAL: HB 603

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Tom Schinder DATE: 3/19/83

ADDRESS: Box 5600

PHONE: 442-4600

REPRESENTING WHOM? MPGA

APPEARING ON WHICH PROPOSAL: HB 749

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: CHAD SMITH DATE: 3-19-83

ADDRESS: Box 604

PHONE: 442-2980

REPRESENTING WHOM? Unemp Comp Adv, Inc

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: DAVE GOSS DATE: 2/19/03

ADDRESS: P.O. Box 2519 Billings MT. 59103

PHONE: ~~245~~ 245-4111

REPRESENTING WHOM? Bellingham Chamber of Commerce

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Jan Gilman DATE: 3-19-83

ADDRESS: 36 S. Davis, Helena

PHONE: 443-7861

REPRESENTING WHOM? ICW

APPEARING ON WHICH PROPOSAL: HB 749

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.